

Lay participation in a public local inquiry

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Declaration

I, Neil Hutton, declare that this dissertation is my own original work.

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ABSTRACT OF THESIS (Regulation 6.9)

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This dissertation is a study of how power operates in mundane social practice. It is a case study of a public local inquiry which was held in Fife in 1977. I argue that one of the functions of the inquiry system, seen as part of the institutional apparatus of the State, is to secure legitimacy for planning decisions taken by the State. In this study, I examine how legitimacy is secured from a group of local objectors during the course of the inquiry itself.

This group expressed and displayed contradictory attitudes to the inquiry before, during and after the inquiry. On the one hand, they participated vigorously throughout the inquiry and claimed to be content with the Reporter's conduct of the inquiry, on the other, they felt that the inquiry was a sham, that a decision had already been taken and that their participation was ineffective.

The Reporter's conduct of the inquiry is important in sustaining these contradictory attitudes held by the objectors. I describe how he adopts certain procedures in order to fulfil his bureaucratic role as an information gatherer and at the same time permits certain relaxations of these procedures in order to assist and encourage lay participation, which is his other main duty. This balance between "efficiency" and "democracy" which the Reporter maintains, is shared by the lawyers and expert witnesses who take part in the inquiry, but is only partly understood by the lay objectors as is manifest in the persistence of the contradictions described above.

The objectors' critical penetrations of the dominant technical rational mode of decision-making are limited and deflected by their respect for authority and belief in the fairness of the democratic system. These latter views are fostered during the inquiry by the Reporter's sincere attempts to assist the lay objectors. Technical rationality, then, dominates the inquiry, but only by securing the consent of the objectors. This consent, however, is not absolute, but only exists alongside a paradoxical and critical scepticism towards the inquiry process.

Use this side only

CONTENTS

Preface

Chapter 1 - Administrative Law and the Public Inquiry

Chapter 2 - Law and State

Chapter 3 - The Moss Moran Inquiry

Chapter 4 - The Reporter 1 - the control of procedures

Chapter 5 - The Reporter 2 - the criteria of 'Relevance'

Chapter 6 - The Reporter 3 - the criteria of 'Facticity'

Chapter 7 - The Lay Participants

Chapter 8 - Sociological Analysis and the Public Inquiry

Appendix - Methodology

Bibliography

Preface

This is a study of a public local inquiry. It is about the ways in which the different parties participate in the inquiry and also about the society within which the inquiry has its institutional place. I locate the inquiry as part of the institutional apparatus of the state. One of its functions, is to secure legitimacy for planning decisions taken by the State. These decisions must be awarded legitimacy by a number of social groups e.g. members of parliament, journalists, academics, pressure groups and local objectors. Depending on the particular circumstances any or all of these groups must perceive the inquiry process and the final planning decision as the legitimate exercise of power.

In this study, I am interested in the processes through which the inquiry, seen as part of the decision-making process itself, is awarded legitimacy by the local objectors who participate in it. It is in this sense that it is a study of "legitimation in action".

At one level, the operations of the inquiry reproduce the dominant ideological and structural relations of society. These relations are unequal and hierarchical, reflecting the hegemony of a particular class and culture. However, somehow, these relations are presented, through the day to day procedures of the inquiry, as just, equal and neutral. The lay objectors accept the inquiry procedures as legitimate and fair and participate actively even though they also think that the inquiry is a sham and that the inevitable decision has already been taken. This study sets out to account for this contradiction and thus to demonstrate how legitimation operates in mundane social practices.

I employ Giddens, (Giddens 1976) model of "structuration" as a conceptual framework for understanding the social world. For Giddens there is a dialectical relationship between social actions and social structures. Individual actions produce and reproduce structures. Social reality is , at the same time, both the product of individual actions and the resource which constitutes individual actions. Giddens uses the example of speech and language. Speech is incomprehensible without the structure, language, which is used to produce speech and which itself is reproduced in speech. This describes a relationship which is a continuous historical process and thus raises the problem of how to decide where to interrupt the process and when to stop.

(1)

The advantage of this analysis is that instead of splitting
(2)
up the social world into the "macro" level of social structures and the "micro" level of social interaction, or into a variety of specialist areas or even into a variety of academic disciplines, one attempts to grasp the relation-ships in the social process i.e. as a

(1) Gregory (1982) recognizes this in his attempt to apply Giddens' model to a historical study of the industrialization of the Yorkshire woolen industry.

(2) The distinction between "micro" and "macro" sociology is a commonplace in introductory courses in sociology. As a discipline sociology is divided into "sociologies of" the family, the city, law, industry (etc) and a long standing topic of sociological investigation, deviance, is also studied by psychologists, lawyers, social administrators, psychiatrists etc. My aim in this dissertation is not to attack specialisation per se, nor to give a complete account of the inquiry which leaves nothing more to be said. I want to present a study which attempts to look at the practical relationship between social structure and social action in a particular setting as opposed to studying interaction outside any political social or historical context or studying an institution without examining it's day to day practices.

totality. One of the main reasons for "splitting" was that the social world was too complex to grasp in its entirety. This is still a truism, but in splitting the study of social structures from the study of social action, scholars have either ignored their relationship or used inappropriate conceptual models to attempt to reunite them. (3)
(Mills 1959 p20)

It is vital to preserve the idea that social action and social structure are not independent, but inextricably interlinked. Social structures are not simply produced by the actions of free independent individuals; nor do social structures entirely determine individual actions. Actions produce and reproduce structures. This is a dialectical relationship, the precise contours of which can only be established by empirical study within a particular historical configuration. It is possible to see Giddens' approach as a return to the fundamental concerns of the classic founders of the discipline. Mills argues that Marx, Durkheim, Weber et al shared the desire to grasp the relations between history and biography, to understand man as both the product and the creator of society. (Mills 1959 p6) In this study I argue that it is only by locating the public inquiry in a historical and political context that one can understand what actually happens in the inquiry. The "promise" of the sociological imagination (Mills 1959) is to understand how the "private troubles" of the various parties participating in this public inquiry are related to the structural operations of power in our society.

(3) Parsons (1949) is the most distinguished example. For a criticism of his conceptual framework see Giddens (1976).

In political terms, one major function of the inquiry is to secure the award of legitimacy from the lay participants. To examine how this is accomplished, I examine the inquiry as an active construction of the participating actors, using Giddens' (Giddens 1976) framework of 'structuration'. My concentration on the details of the daily conduct of the inquiry is dictated by my interest in how legitimation works in practice. This study of the inquiry should be read as an example of how one social practice reproduces specific ideological social relations.

It is the normal practice, in a study of this kind, to critically assess the literature in the field. However because of my theoretical orientation; there is no clearly defined 'field' to assess. Chapters 1 and 2 set out the central substantive and theoretical/methodological problems addressed in this research.

Since the work is intended to contribute to current debate on public inquiry procedures, and most of this debate has been amongst lawyers. I begin with a critical discussion of the development of the procedural regulations governing public inquiries. I then look at some recent commentaries on inquiries, predominantly from within the field of administrative law. I go on to draw on work in political and sociological theory to describe the shortcomings of traditional work in administrative law and to set up an alternative approach to a study of the public inquiry. I argue that some of the questions raised by these legal critics can only be answered by a sociological study of the public inquiry.

CHAPTER 1

Administrative Law and the Public Inquiry

I begin by giving a brief account of the history of the legislation governing the procedural regulations of public inquiries. I intend to show that both in the legislative changes to inquiry procedures, and in much of the recent work considering public inquiry procedure, hardly any attention has been directed to the procedures adopted during the course of the inquiry. Where lawyers have considered "what goes on" during an inquiry, the criticisms have been extremely vague and have certainly not constituted an adequate analysis of the inquiry as a social construction of its participants.

(A) A Brief History of procedural Reform

According to Wraith and Lamb, (Wraith and Lamb 1971) the origins of the modern public inquiry are to be found in the early nineteenth century in legislation dealing with land and relief of the poor, though it was not until the end of the century that provision for public inquiries took on a recognisably modern form.

(2)

In a recent book, Burton and Carlen (Burton and Carlen 1979) describe the increasing use of Royal Commissions and Departmental Inquiries, also in the first half of the nineteenth century. The function of these 'inquiries' was to provide knowledge for policy formation. Burton and Carlen argue that they provided the administration with a technique for controlling social and structural

(1) Inclosure Acts 1801, Royal Commission on the Poor 1832.

(2) Education (Scotland) Act 1872, Board of Trade Inquiries Act 1872, Housing of the Working Classes Act 1890, Public Health (Scotland) Act 1876, and the Commons Act 1876 all set out more detailed provision for inquiries.

conditions, and for securing legitimacy,

"so that economic interests could be systematically pursued."

Public local inquiries were clearly much less important in the nineteenth century than these national commissions and inquiries. However they seemed to serve the same functions: the creation of information and the "manipulation of its popular reception", albeit on a smaller, local scale. The use of inquiries for major technological developments in recent years has made the "local" public inquiry into a "national" (3) forum precisely concerned with securing legitimacy for controversial planning decisions.

The Housing, Town Planning etc. Act of 1909 was one of the first pieces of legislation in the new field of "urban planning". Its provisions for a public inquiry were the same as those under the Public Health (Scotland) Act 1876 and, despite the Housing and Town Planning (Scotland) Act 1825, the provisions for inquiry remained much the same until the Local Government (Scotland) Act 1947 and in fact were not materially altered until 1964.

It seems that from their inception, these inquiries were conducted predominantly by the legal profession. In Scotland the Sheriff already had considerable, if infrequently used, administrative powers and was often appointed as commissioner or inspector
(4)

(3) By this I mean that although the inquiry is held locally into a particular planning application it can receive attention from the media pressure groups, members of Parliament etc which make the inquiry a national public issue. The Windscale Inquiry is an obvious example.

(4) The Grant Report on the Sheriff Court Cmnd 3248 1967.

to an inquiry. Parties were often represented by advocates and
(5)
solicitors, there were provisions for the taking of oaths, and
(6)
fines for the non-production of evidence. Inquiries were conducted
according to the adversary procedure adopted in the civil and criminal
courts. There were no detailed procedural rules governing inquiries,
and it would appear that the adversary procedure was adopted in
imitation of the standard legal forms. (7)

Though the procedures and provisions for inquiry remained
unchanged until the early sixties, definition of the function of the
inquiry was being debated both inside and outside the courts. The
debate concerned whether the public inquiry performed a judicial
function or an administrative function. This debate took place during
a growth in the area of administrative law, which worried traditional
lawyers who were concerned that individual freedom and rights would be
eroded by the extension of quasi-judicial discretionary powers.

Conservatives such as Lord Hewart (Hewart 1929) would have wanted
the inquiry classified "judicial" so that individual liberty could be
protected by judicial review of administrative decision making.

- (5) In Scotland this official now has the title of "Reporter" the
English term is still "Inspector".
- (6) Local Government Board (Scotland) Annual Report 1911 reports an
inquiry held in 1902 under the Housing of the Working Classes
Act 1890.
- (7) During my research I found only passing references to procedures
during inquiries and it is on this absence of attention to
such procedures that I base my argument that adversary
procedures were adopted by default. A proper historical
analysis of the emergence of these sorts of administrative
procedures was beyond the scope of this study and this work
remains to be accomplished.

A series of cases traces the courts' attempts to classify the inquiry's function. The present position remains uncertainly
(8)
balanced between administrative and judicial. This controversy is really concerned with how a court will define an inquiry for a particular purpose. As de Smith (de Smith 1980) points out, sometimes a procedure may be classified as judicial and later, for different purposes, the same procedure may be defined as administrative. An inquiry possesses both administrative and judicial elements. De Smith demonstrates that the inquiry itself may be of a judicial type while the decision made by the Minister afterwards is purely administrative and political. Wade (Wade 1963) also calls the hearing before the Inspector "the judicial stage". According to Ganz (Ganz 1974) it is important to see the inquiry as an extension of ministerial decision-making. The inquiry is held in order to elicit full information on which the minister can base his decision. Since, for this reason, the inquiry does not fulfill the criterion of conclusiveness, it cannot be characterised as judicial.

De Smith describes this debate as sterile and suggests that hard and fast definitions of "administrative" and "judicial" do not exist.

This controversy has in any case had little effect on public inquiry procedures for though a judicial action must observe the rules of natural justice these same rules would also be held to apply to administrative acts, e.g. the Minister cannot take into account a

(8) Cooper v Wandsworth Board of Works (1863) 14 CBNS 180
Local Government Board v Arlidge [1915] AC 120
Ewington v Minister of Health [1935] 1KB 249
Franklin v Minister of Housing 1948 AC 87

new fact which has been brought to his attention after the inquiry, without informing the parties and allowing them to make submissions.

For my purposes there are two important points to be taken from this legal debate over the function of public inquiries. Firstly as Ganz says, the main function of the inquiry is the collection of information. Natural justice will require that this is done in a "fair and impartial" manner - but the decision lies with the Government minister responsible. The inquiry itself is not "judicial" because it does not make decisions but only collects information. Secondly, the fact that members of the public might (9) perceive the inquiry as "judicial" is not a relevant matter for deciding whether a court should be able to review the action, but it may be relevant for understanding how lay objectors participate in an inquiry. (see chapter 8)

The Crichton Down Affair (10), in the early 50's led to the setting up of the Franks Committee. The details of the affair are unimportant here but it involved criticism of the Civil Service and Ministers for abuse of their discretionary powers. The Conservative Party expressed concern over the threat to individual liberty from the encroachment of the State. (The Conservative Party 1955)

The Franks Committee had the following terms of reference,
"to consider and make recommendations on,

(9) Although as I argue below (Ch4) the Reporter collects information "as if" he was the decision-maker.

(10) Cmd 1976.

- a) The constitution and working of tribunals other than ordinary courts of law, constituted under any act of Parliament by a Minister of the crown or for the purposes of a Minister's functions.
- b) The working of such administrative procedures as include the holding of an inquiry or hearing by or on behalf of a minister on an appeal or as a result of objections or representations and in particular the procedure for the compulsory purchase of land."

The two major recommendations of the Committee were

- (1) The establishment of a Council on Tribunals to report regularly on tribunal and inquiry procedures.
- (2) The adoption of the principles of openness, fairness and impartiality as guidelines for the exercise of administrative procedures.

With respect to public inquiries there were two more specific suggestions,

- (1) The publication in full of the Reporter's Report with reasoned decisions so that the objector would know the case he had to answer.
- (2) The publication to objectors of new factual evidence (as opposed to advice on policy) received after the inquiry to give them an opportunity to make representations.

Immediately circular 9/58 from the Ministry of Housing and
(11)
Local Government was distributed to local authorities. This asked
them to implement the relevant Franks recommendations, most of which
were later implemented in the Tribunals and Inquiries Act 1958.

The Franks Committee looked at the conduct of almost all
administrative procedures and their recommendations were aimed at
securing a broad similarity of standards, hence the principles of
"openness, fairness and impartiality". As far as public inquiry
procedures was concerned, the Committee made specific recommendations
about procedures before and after the inquiry, but seemed satisfied
with procedure during the inquiry as there was no analysis or
recommendations on the point. Of course we can assume that "openness,
fairness and impartiality" apply to procedure during the inquiry, but
these terms are extremely vague and do not specify the procedures to
be adopted during the inquiry.

In 1962 two statutory instruments were published detailing
procedure to be followed before, during and after a public inquiry.
One dealt with compulsory purchase inquiries, the other with planning
appeals. They deal with the notification and advertisement of the
inquiry, the duty of the Minister to inform objectors of any new fact
or where he differs on a finding of fact from the Reporter, and lays
down rules for the general procedure of the inquiry. These were the
first in a series of statutory instruments which were to define
inquiry procedure rules.

(11) This applies to England, the Scottish equivalent is the Town
and Country Planning Appeals (Inquiry Procedure) (Scotland)
Rules, 51 181 (1964)

S.1. 1962 no 1424
 S.1. 1962 no 1425
 S.1. 1965 no 473
 S.1. 1968 no 1953
 S.1. 1969 no 1092
 S.1. 1976 no 721

These made changes to pre-inquiry procedures in respect of the length of notice of inquiry required to be given, provision for a written statement of the inspector's reasons, the noting of third party interests, and the inspection of documents and evidence by written representation.

The foregoing applies to England and though relevant to a general discussion of the development of public inquiry procedures, does not apply to Scotland. The following rules currently govern the conduct of inquiries in Scotland.

- (1) Town and Country Planning (Scotland) Act 1972
- (2) Town and Country Planning Appeals (Inquiries Procedure) (Scotland) Rules 1964 SI 181/1964
- (3) Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1976 SI 1559/1976
- (4) S.D.D. Circular 14/1975 Public Inquiry Procedures with Memoranda of Guidance to the Reporter.
- (5) S.D.D. Circular 87/1974 Planning Appeals Written Submissions Procedure (Memorandum 88/1974).
- (6) S.D.D. Circular 20/1976 Relating to the Town and Country Planning (Determination of Appeals by appointed persons). (Ascribed Classes) (Scotland) Regulation 1976. Town and Country Planning (Scotland) Act 1972 (commencement no 4) order 1976.
- (7) S.D.D. Circular 64/1976 Development control

1) Development requiring provision of new infrastructure.

(2) Appeals against decisions by Regional Planning Authorities.

(8) S.D.D. Circular 25/1966 Award of Expenses at Statutory Inquiries.

(9) Cmnd 7133 April 1978 Report on review of Highway Inquiries Procedures.

(1), (2) and (3), set out the rules for holding an inquiry and governing procedure before, after and during the inquiry (4) is the code of current practice which is meant to be followed by Reporters and parties at public inquiries. This is the most important for the actual procedure which occurs at a public inquiry. It is based on the principles of the Franks Committee recommendations and aims to make the inquiry cheaper, quicker, more informal and generally more efficient (5), (6), (7), (8), (9) deal with inquiries into
(12)
particular topics.

The Tribunals and Inquiries Act 1966 brought inquiries under the control of the Council on Tribunals. Prior to this the Council had only been responsible for mandatory inquiries. There was also a Report by the Council on Tribunals in 1962 concerning the position of third parties, i.e. those without a legal title to appear at planning appeal inquiries. The final recommendation was that the Reporter should allow any party with an interest (though not necessarily with a legal right) to appear in front of the inquiry to give their evidence or cross-examine a witness. This was not to be made a statutory right

(12) See below Chapter 4 for a detailed analysis of Circular 14.

as this would materially alter the law and have effects in a much wider area than the public inquiry.

The Town and Country Planning (Scotland) Act 1972 consolidated previous legislation. There was also a clause implemented in 1976, which gave the Reporter the power to make decisions in certain small inquiries, i.e. those not involving Government policy, considered to be controversial. At the other end of the scale, provision was made for Planning Inquiry Commissions to replace public local inquiries at the minister's discretion in the case of an application which involved highly technical data, or involved issues of national rather than local importance. Despite calls for the use of P.I.C.'s in such cases as the Third London Airport and Windscale, none have yet been held.

Thus an exhaustive study of legislation which has dealt with the procedural regulation of public local inquiries demonstrates that very little consideration has been given to procedures during the inquiry.

Wraith and Lamb make this comment.

"Procedural rules have had a greater effect on what happens before and after rather than during an inquiry."

According to these writers, prior to the Franks report, procedure had grown from experience and "common-sense". Franks made no recommendations for the reform of "procedure during the inquiry" nor did circular 19 of 1958. Even SDD circular 14 1975 is more concerned with pre-and post inquiry procedure. It seems clear that the actual processes of taking evidence, gathering information and compiling

knowledge have been considered unproblematic. There are very few public rules, regulations or principles governing procedure during the inquiry. The Reporter has the discretion to adopt any suitable procedure providing he informs the participants before the inquiry. In Chapter 4 I discuss how the Reporter deals with this problem and in Chapter 7 how the lay objectors know what to do in the inquiry in the absence of any formal instructions.

Some criticisms of Public Inquiry Procedures

Sharman (Sharman 1977) refers to the administrative/judicial debate, (see above) when he discusses public perceptions of the inquiry. He suggests that there is a conflict between administrators and the public. The former see the inquiry as merely one stage in the process of policy implementation, the latter suggests Sharman, see the inquiry,

".....as a court exercising independent and final judgement in a dispute between a central or local government department and a member or members of the public."

i.e. the public see the inquiry as a legal institution, as a kind of neutral mediator or arbiter between the individual and the State. For the State the inquiry is primarily administrative, for the public, according to Sharman, judicial.

For Sharman,

"The inquiry has a precise and limited objective which might not be the real objective as members of the public see it."

Sharman also sees inquiries as heavily stacked against the objectors. He argues that few communities have legal and financial resources and thus lack information and technical expertise, that the procedural rules are all left to the discretion of the inspector, (13) and that the inquiry does not sit in the evenings or at weekends, nor are there transcripts available to help those who are irregular attenders.

Sharman is not the only commentator who has noted that for some members of the public the inquiry seems like a court of law.

"Procedure is somewhere between a cosy chat and the formal conventions of a court of law." (Wraith and Lamb 1971)

"For most people attendance at an inquiry is indistinguishable from a day in court." (Wraith and Lamb 1971)

"The adversary procedure creates conflict and formality which do not further public participation." (Ganz 1974) there exists....."a reaction against over judicialised adversary procedures which are time consuming and costly, exacerbate conflict and are unsuitable for the discussion of policy issues." (Ganz 1974)

"to the general public, the inquiry is a trial, it is a court. " (Hansard vol 1590 1957/8 3rd July 1978)

"the courtroom-like atmosphere of the inquiry makes it difficult for ordinary people to put their point of view." (HMSO 1972 50 Million Volunteers)

There are then, many legal critics who accuse the public inquiry of appearing to be "court-like", or of having a "judicial air" when in

(13) i.e. Reporter in Scotland.

strictly legal terms it would be defined as an administrative tool; a technique for gathering information.

The major assumption shared by these commentators is that "adversary procedures", "formality" and "court" or "judicial" atmospheres somehow hinder participation in the inquiry by lay persons. However there are no detailed accounts proffered of how these impediments operate. It seems to be taken as a matter of "common sense" that more "informality" will assist lay participation, more "formality" hinder it. There is no discussion of what actually constitutes "formality" or "informality" nor of how these might or might not be effective in practice. For example are lay people intimidated by "legal talk" or are they more generally afraid of speaking in public? How does intimidation work, i.e. how precisely is power exercised during the inquiry by lawyers over lay persons, if indeed this is what happens? (In Chapter 4 I discuss these issues as they were manifest in the Moss Moran inquiry.) Like the legislators, these commentators have not concerned themselves with the day to day procedures of the inquiry. They do not ask who controls the sequencing and selection of speakers i.e. who is allowed to speak and when? or what can be said and what speech is prohibited. These issues have constantly been taken for granted as unproblematic. It has further been assumed that this kind of investigation is irrelevant to considerations of how power operates, e.g. it is assumed that procedural rules and rhetorical claims can be put into practice unproblematically. It is the aim of this thesis to put these

(14)

(14) An example of these claims would be "openness fairness and impartiality" see chapter 4.

assumptions to the test. Lukes (Lukes 1975) may be correct in proposing
(15)
that the symbolic and ritual aspects of the law reinforce and
perpetuate official views of the nature of social order, i.e. people
are intimidated by the majesty of the law thus increasing their
respect for, and obeisance to, the social order it represents, but
this obscures the problem of how this is practically achieved in a
particular setting. Study of the latter may raise important political
questions concerning the design of public inquiry procedures.

I will return to these points later in this chapter and indeed
throughout the thesis. I want, for the moment, to turn to some more
recent comments on public inquiry procedures.

These concern what have come to be known as "Big Public
Inquiries" e.g. Windscale, Vale of Belvoir, the Sizewell inquiry
(current at the time of writing). These are inquiries into the siting
of large developments, often involving complex technology, very often
posing potential major hazards, often in areas on which there is no
clear Government policy (energy and nuclear power) and often where the
State is both developer and decision-maker. (see OCPU Chapter 1).

The PERG proposals are based on a study of the Windscale inquiry
(16)
into nuclear fuel reprocessing, but are concerned with the political
context of decision-making in which an inquiry takes place. They feel

(15) See also Arnold (1962)

(16) Political Ecology Research Group is an independent research
organisation based in Oxford. The Outer Circle Policy Unit which
no longer exists) was another independent research group based in
London. Neither group has any formal political affiliations.

that major policy decisions should be taken by Parliament (rather than the Government) and thus they say

"It follows that the role of an inquiry or a commission should be that of a forum for debate and a vehicle for research and not that of a court which reaches a verdict."

They feel that, at least in the case of Windscale, the inquiry report was directed too much towards a conclusive decision rather than a neutral presentation of information.

PERG also propose an extension of public debate on these issues by the provision of information in the form of a full range of UK and foreign technical reports in libraries, local halls and display areas, of media access for participants in major inquiries and by allowing public dissent to be voiced by state servants (i.e. a weakening of the Official Secrets Act). They propose a two stage inquiry. The second stage would test the evidence by cross-examination under oath. Evidence would be pre-submitted written precognitions and would be arranged according to issues rather than institutions.

They argue that "lawyers should not be allowed to dominate the inquiry" but envisage their continued employment. They support funding for the objectors to perform research and for travel, subsistence and secretarial costs.

In general PERG want to extend public debate on these controversial, high-technology developments and hold an inquiry which is concerned to collect information from all relevant and competent sources. The "testing of evidence by cross-examination" which forms the central part of current public inquiry procedure thus plays a much less significant part in the PERG proposals. However this adversary format is retained without any examination by PERG of how it might affect the collection and presentation of information.

Representatives of PERG were part of the working party set up by the "Council for Science and Society", "Justice", and the "Outer Circle Policy Unit to examine the "Big Public Inquiry". Their report was published in 1979. (OCPU 1979) The Report claims that,

"though public local inquiries are in fact part of the process of carrying out central policy and not self-contained quasi-judicial proceedings..."

objectors and the general public feel that

"the proceedings are designed, to enable them, in some real way, to influence a decision which has not yet been taken - in short, to participate in the making of public policy."

The report argues that the public have lost confidence in the inquiry system and that the public feel that it provides window dressing for a decision that has already been taken. The report sets out proposals for procedures which would allow planning for major developments in a way that the public "understands, accepts and can ultimately control". The report argues that planning procedures need to change in order to preserve "government, by consent through a periods of profound social change".

I will return to the implications of this analysis after a discussion of the OCPU proposals for a "Project Inquiry". These proposals only refer to complex and controversial developments with national or international implications. The working party accept that public local inquiries are successful for the vast majority of small local planning problems.

Like the PERG proposals those of OCPU attempt to place the "inquiry" into the context of political decision making. They argue that one current problem is that policy making by Government tends to be made incrementally, at the same time as developers are drawing up their planning applications and in consultation with them.

"policy making is secreted in the interstices of individual decisions".

Thus a conventional inquiry is often presented with a "fait-accompli" i.e. a Government policy which by implication favours the planning application. The Project Inquiry would begin before a planning application was lodged, to fill the gap between a

Parliamentary Select Committee concerned with general policy and a public inquiry concerned with a specific application. The aim is to recognize how policy is made and put into practice and to design procedures which can penetrate these processes and, again like those of PERG, open them up to wider and better informed public debate.

The Project Inquiry would be initially extra-statutory, appointed by the Secretary of State for the Environment who should also appoint a Chairperson and 6 to 9 other members who should be both experts and lay persons but above all else should be impartial. The P.I.'s terms of reference should be as wide as possible and should allow the very necessity of the project to be questioned.

"The function of a P.I. should be to investigate impartially, thoroughly and in public, all the foreseeable economic social and environmental complications and repercussions of the project including its benefits and its costs and risks of all kinds. The P.I. should consider all feasible alternatives and seek to ensure that all the assumptions, material facts, issues and arguments are brought out, tested and fully and fairly discussed."

The P.I. should also have two stages - investigation and argument and in this respect the OCPU proposals are very similar to those of PERG in respect of inquisitorial and investigatory powers and funding. The report also recommends that once approval has been given for a development after a P.I., a site-specific public local inquiry should be held.

Both the PERG and OCPU reports recommend changes in the procedures for "big public inquiries" which really amount to changes

in the democratic political process. Both the collection and presentation of information are to be done in public and by all interested parties. The aim is to have a public debate about means and ends, with a background of information on which all parties agree (or agree to differ publicly for specified reasons). The final political decision would have to be publicly justified in the mass media and would be a matter for national debate and criticism.

Arguably this process would be inappropriate for "medium sized inquiries" such as Moss Moran because the policy decision about the basic desirability of the development has already been taken by the Government. OCPU and PERG felt that their schemes were only suitable for projects of national importance and controversy. Clearly any definition of these projects will be contestable and the objectors at Moss Moran certainly felt that the issues raised by the project were indeed of national importance and controversy. However the OCPU and PERG reports demonstrate clearly that medium sized inquiries are part of a broader political context. i.e. that the inquiry cannot be considered as a neutral information-gatherer. This still leaves open the question of the participation in the inquiry of non-expert, lay objectors, who are not representatives of national pressure groups or political lobbies.

McAuslan (McAuslan 1979) takes up this problem of "meaningful participation". He berates administrative lawyers for ignoring the political context of law and for operating with inappropriate liberal-democratic concepts and assumptions. He describes three ideological models which, he argues, co-exist within contemporary planning

legislation. He wants to demonstrate that law is not a "neutral and objective set of rules" but a "value-laden set of principles".

The first two ideologies, the protection of private property and efficient administration, share, in the area of planning law, a community of interest in the maintenance of the status quo; in preserving the existing state of property relations, socio-economic order and government and administration. Those interests are antithetical to the third ideology of public participation which, for McAuslan, exists as rhetoric but is not achieved in practice,

"except on terms acceptable to and controllable by public officials, or in circumstances where the claims of private property are strong and no law likely to be introduced in the present circumstances will give effect to it." (McAuslan 1979 p10)

This third ideology asserts that the right of challenge to a proposed development should be a citizenship right rather than a property right and that social and community considerations should be taken into account as criteria for land use planning as well as property and economic considerations,

"the law should provide more opportunities for people's views on their own environment to be decisive and for them to be able to act on those views." (McAuslan 1979 p3)

McAuslan proceeds, in this paper to analyse the Windscale Inquiry in terms of his three ideologies. He concludes that the appointment of a lawyer as inspector, with a predisposition to support ideology 2 and accept the orthodox point of view, made participation by objectors

safe. The "ultimate and predictable result" would not be threatened by the arguments of objectors providing the inquiry was chaired by a lawyer who, in good faith, regarded the inquiry as a forum for collecting relevant information to aid the Secretary of State in reaching a decision. McAuslan argues that the objectors held to his third ideology of public participation and did not realise that the inspector did not share this model.

"the whole structure and operation of the system created, supported and sanctioned by law and lawyers is such that the alternative view always does have to mount a challenge to the orthodox view, in fora, and via procedures with which adherents of the orthodox view are very much at home, and have the merits of that challenge always judged by adherents of the orthodox view."
(McAuslan 1979 p19)

This is why McAuslan argues that lawyers should not attempt reforms within the existing system but should try to change the system itself to try to include "meaningful participation".

There are two points which I want to raise in connection with McAuslan's work. Firstly I agree with his emphasis on the political context of law and his concern with the relationship between law and State. At the level of generality, at which his work is pitched, it is sufficient to assert that law sustains

"the existing state of property relations"
(McAuslan 1979 p9)

and to argue that somehow lawyers have to change "the system"

rather than attempt reforms within the system, but, as McAuslan himself recognizes, a more detailed and sophisticated analysis of the relationship between law and State will be necessary as soon as one attempts to study a particular institution at a particular time. In the next chapter I draw out those elements of the relationship between law and State which are relevant to the study of legitimation in action in a middle-sized public inquiry.

The second point concerns the gap which McAuslan discerns between "law in the books" and "law in action". With reference to the Windscale inquiry he argues that there exists provision for lay participation but that in practice lay participation is "meaningless". It is not clear what he means by "meaningless". Does he mean "in-effective in terms of influencing the final decision in their favour" or is participation perceived by the laymen to be absurd and disordered? In either case we need to explain why the objectors participate at all if they are so disenchanted with the process? McAuslan also fails to distinguish between the participation of "local objectors" and the participation of third party "pressure group" objectors. Although the former may appear in the inquiry by virtue of their property interest (McAuslan's ideology 1) their participation may well be based on broader objections concerning, e.g. the criteria of good planning. However they might award legitimacy to the planning process in quite a different way from those objectors from a pressure group, who view the inquiry as part of the struggle to promote their cause and not as a one-off opportunity to prevent major changes to their immediate environment.

Thus lay objectors might see their participation as "ineffective"

but not as completely meaningless. As I am concerned with the operation of legitimation in action, it is important to establish how the lay objectors perceive their own participation.

McAuslan argues that his third ideology of "lay participation" is at least sceptical to the claims of legitimacy for decisions made by officials in terms of "the public interest" (ideology 2). Lay objectors may feel that their version of "the public interest" is quite different. For this reason the law only allows lay participation when it can be controlled by public officials, and

"no law likely to be introduced in the present circumstances will give effect to it (lay participation)" (McAuslan 1979 pl0)

My research would support these arguments but there are gaps in McAuslan's analysis which I try to fill in this study. It is not clear how law or legal officials control lay participation. Is this done completely within the procedures of the public inquiry? How do public officials use their discretion? How do lay objectors perceive the operation of this power and how do they construct their participation? How is legitimacy secured? Why do lay objectors award their consent and approval to the system?

This brings up the issue of the gap between "law in the books" and "law in action", between what law says it does and what it does in practice, which I discuss more fully in Chapter 2. McAuslan seems to imply that there are limits to the control over social practices which can be exercised by law and that we cannot expect a

one to one correspondence between, legal rhetoric and legal practices. One implication might be that the design of rules and procedures to change social practices must take into account the existing power relationships in those practices. e.g. it may be possible to suggest and even implement procedures which would make lay participation more "effective". These concessions might be granted by the State to secure legitimacy, and in this case, the political realities of the distribution of power would be recognized. Thus while one might agree with McAuslan that this is unlikely, it is not impossible. The point here is that law is not seen as an impenetrable monolith. If other conditions are appropriate, it may be possible to use law to redistribute power, albeit in relatively minor ways. However in order to achieve this, we must first understand how power operates in social practices. In the context of this study, we need to understand the details of how legitimation is secured in the inquiry from the lay objectors and how the contradictory gap between the rhetorical claims of law and its practices are managed in this inquiry to secure this end.

In the following chapter I describe in more detail an appropriate conceptual framework for this analysis. The first section deals with the relationship of law and state and the concepts of hegemony and legitimacy. The second section concentrates on the relationship between social structures and social practices with reference to "the gap" between "law in the books" and "law in action".

Summary

I have described how changes in the procedures of public inquiries from their inception, have dealt with pre-and post-inquiry procedures but have ignored the procedures during the inquiry itself. This lack of concern has been repeated by most commentators on public inquiries, and those who have considered what happens during the inquiry have done so in an anecdotal, "common-sense" manner which does not begin to address the complexity and specificity of the position of the inquiry in overall social organisation.

Similarly, critics of the inquiry, have implied their dissatisfaction with a liberal-democratic model of the relationship between law and State so that the inquiry can no longer be uncritically examined as a "neutral" fact-finding forum, nor as an opportunity for "free and equal" persons to put forward their arguments. However none of these critics have specified an alternative conceptual framework, describing the relationship between law and state in contemporary Britain.

In the following sections I attempt to sketch such a conceptual framework and then to address the problems of studying the day to day procedures of the inquiry as the active construction of the participants. My aim is to describe a mode of analysis which I then go on to demonstrate in practice. That is, to describe the inquiry in terms of the production and reproduction of structures through the daily actions of the various participants, and to position this in its political context. In Prosser's terms (Prosser 1982), this work could be read as a study of "legitimation in action", my aim being to

examine how power operates in social practices and thereby describe the practical or organisational limitations to potential policy changes.

CHAPTER 2

Law and State

Underpinning the work of almost all of the writers in the last chapter, there lies a specific model of law and its relationship to the wider society. This might be described as the liberal democratic model of law. In this model, law is conceived as a set of rules which can be derived from case-law and statute. These rules are interpreted and applied by the exercise of reason. The law is independent and impartial, it represents no sectional interests but is the objective arbiter between conflicting interests. Individuals are conceived of as equal before the law, and the state, in this sense, is a legal individual. Thus all sections of society are subject to "the rule of law". Laws are made by elected representatives of the people in Parliament. These representatives are subject to "the rule of law" as are the Government and the civil service.

This is a crude account of classic liberal/democratic theory. In a recent paper, Prosser (Prosser 1982) has criticised public lawyers for their uncritical use of this model in their work. They have generally conceived of law as politically neutral and thus proposed reforms of the law as if from an "objective" position. Prosser argues that this model of law must be seen as ideological. Law presents itself as neutral and uncommitted when it represents and secures the interests of particular sections of society. It is a state institution which is used not so much to constrain the state but as a way of securing legitimacy for state actions by presenting them as "legal".

Prosser emphasises

"the central importance of theory,
philosophy and ideology in administrative
law",

and echoes McAuslan in his call for the development of an alternative conceptual scheme for the study of 'administrative law'.

Prosser himself cites the work of several social theorists, whose work spans a variety of traditions. For Prosser, they have in common, an analysis of modern society which emphasises the growth of State intervention into the direction of social and economic life. These writers also argue that the law cannot be conceived of as separate from the state, and is, in fact, an important executive arm of the state.

Before questions concerning the purpose of lay participation in public inquiries or possible procedural reforms for inquiries can be addressed, we need to know more about the functions of legal regulation in general in the contemporary state. In particular, the function of securing legitimacy for State action. Sociologists concerned with deviance and criminal justice have produced useful work in this area, and I will argue that the analysis, derived mainly from the work of Gramsci, presented by Hall et al (Hall et al 1978) is most appropriate for addressing the problems of legitimation in public inquiries. I do not propose to enter into the range of Marxist debates on the nature of Law and state (see Jessop 1980) but rather to present an analysis which is conceptually equipped to address the public inquiry as an instance of "legitimation in action". This point will become clearer as my argument progresses.

Theory of the State

One of the main difficulties in trying to understand the nature of

the state, is that the term does not refer to any specific institution or even any limited set of institutions, i.e. it is not merely the government, or parliament or the civil service or all three. Gramsci describes the state as "organisational and connective", and in this (1) sense it is easier to examine the state as a nexus of relationships. Relationships between what or whom? The function of the state is to construct civil society in a manner which secures the requirements of the economic structure. This is to say that the economic mode of production (the base) is seen as determinant, in the last instance, but that the constituent parts of 'Civil society' have a degree of autonomy from the mode of production.

For Gramsci the social order reproduced by the state could be maintained either by force or with the consent of the subordinate classes. The relative employment of these was dependent on the particular type of state and the historical context. Hall describes the early 18th State (known as 'Old Corruption') as relatively free in its use of force. Law was the most obvious instrument of class oppression, and less effort was required to secure the consent of the population. The modern State operates with the consent of the masses, (2) though the coercive use of the law as ultimate sanction is always available. Gramsci uses the term hegemony to refer to the exercise of power through consent. This consent has to be reproduced through the state, and thus through the institutions of the family, education,

(1) My comments in this section are substantially drawn from Gramsci (1971) Anderson (1976) Hall et al (1978). The latter incorporate the work of Althusser (1969) and Poulantzas (1973) as well as Gramsci (1971) into their discussions.

(2) These arguments are taken from Thompson 1975 and Hay et al 1975.

church etc. and in particular through the ideological function of these institutions.

Anderson (Anderson 1976) considers Gramsci's conceptual apparatus in some detail. In particular he is concerned with the relationship between the state and civil society. He rejects those theorists who make no distinction between the two. This definition makes it possible to make the important distinction between the bourgeois democracies of the West and the State socialism of the East. It is important, for Anderson, to preserve a conceptual independence between state and civil society when considering western democracies. So, for example, the public local inquiry can be distinguished from the coercive apparatus of the state and examined as an institution which operates with the "freely given" consent of the lay participants. In this study I am particularly concerned to investigate how this "consent" is produced and in what sense it is freely given. Hegemony is not a simple balance between state coercion on the one hand, and the consent of the masses on the other. Since the state has the sole legitimate right to the use of violence, this coercive sanction is always available as a threat, and as a last resort. Government by coercion alone in a developed Western capitalist state is almost inconceivable, but if consent were to be lost, the state would retain the use of coercion to establish social order.

"The normal structure of capitalist political in bourgeois democratic states is, in effect simultaneously and indivisibly dominated by culture and determined by coercion." (Anderson 1976)

In other words, the threat of force is omni-present but largely invisible, political activity takes place predominantly in the struggle for the consent of the population, and this takes place at the level of culture.

For Anderson, this consent is granted not by reference to the ideology of technical rationality as a replacement for traditional religious beliefs, but through the ideology of representative democracy. Those socialists who are critical of the status quo, think (3) that "an electoral majority can legislate socialism peacefully from a parliament". Conservatives don't want to change the "consensus". A socialist who followed Gramsci's analysis would not, as some have suggested, be the equivalent of a "reformist liberal". There always exists the ultimate coercive underpinning to the political operations which make up the procedures of representative democracy. i.e. electoral success for a socialist party would be no guarantee of the establishment of a socialist hegemony. The struggle for hegemony is the important political struggle. Without popular support or at least consent, no power-group will be able to exercise their power - it is inconceivable, in contemporary Britain that any group could rule through force alone. Thus for any socialist political change - a socialist hegemony would have to be established. The attitudes and meanings of the majority would have to change and one of the crucial tasks of socialism is not simply to display capitalist social organisation as unjust and absurd, but to show how it achieves some

(3) This is an important issue in Chapter 7. This aim of this study as a whole is to investigate how, in the practice of the inquiry, these ideologies operate. I want to examine how consent is secured in practice.

of its goals and to show how this is accomplished through the positive efforts of many whose own interests are being threatened.

The aim is to describe a space for political action, showing the limitations and possibilities for challenging the dominant hegemony, rather than presenting the domination of capital, as absolute, all-pervasive and inexorable.

In the manufacture of consent, the function of the state in universalising class interests is crucial. In the last instance the state represents and satisfies the needs of the ruling class, as they control capital. However there are often instances where the state has to act against certain interests of the ruling class fraction, in order to promote its long term interests. As Hall argues, the term "ruling class" refers to that element of a class, or of various class fractions which exercises authority in the interests of capital. This includes securing the support of subordinate class fractions through the connecting organisations of the state. This support can only be achieved in modern society by ideological means. Those interests which serve the 'ruling class' have to be presented as universal interests and this is one important function of the state.

In juridicial ideology, individuals are constituted as free and equal individuals subject to "the rule of law" and the state represents the 'general will' also as an individual subject to law. Law is a crucial means, then, by which class interests are presented as universal. Private property rights and contract are the basis of a liberal/capitalist legal system, yet they are presented as the natural and inevitable basis of any legal system. What has an existence only

contingently in a specific historical context, e.g. the right of private ownership of property, is presented as having an existence independently from any historical or economic circumstances; it is presented as equitable because it is natural and not as the promotion of one sectional interest over another.

We see here two functions of law. Firstly law constitutes certain social relations required by capital, title to property, contract etc. (This argument is similar to that put forward by Pashukanis, (Pashukanis 1978) that the form of bourgeois law reproduces the commodity structure and developed capitalist mode of production. For a critical discussion of his arguments see Jessop 1980) and secondly, through its ideological function, law presents these class interests as natural and universal. In a more general sense the ideological function of law is to secure consent, i.e. to ensure that most people accept the exercise of authority by the dominant class as legitimate. e.g. the voluntary subordination of Labour to Capital in the "free" contract of employment. Of course other institutions perform the same ideological function in securing consent (the family, the education system, the media) and it may not be possible, even with detailed empirical study to separate out the degree of effectiveness of any particular institution in securing consent, independently of other ideological sources.

Thus, this sort of Marxist analysis moves away from a crude economism where bourgeois law is seen either as an inevitable product of the market, or as the executive arm of the ruling class. In its ideological function, law is part of the state machinery for the maintenance of hegemony through the production of consent. This

conceptual scheme allows us to examine empirically, the relationships between the maintenance of social order at the political level of the state with the construction of social order at the level of the meanings used by people to think and feel about their social world. We can examine how, in Giddens terms (Giddens 1976), social order is produced and reproduced. That is, individuals proceed as if they were making free decisions and in their very actions reproduce a patterned social order which, in the last analysis, serves the interests of capital.

Williams (Williams 1977) describes this idea of hegemonic order well,

"the pressures and limits of what can ultimately be seen as a specific economic political and cultural system, seem to most of us, the pressures and limits of simple experience and common sense."

Paul Willis's book "Learning to Labour" (Willis 1977) provides an excellent empirical analysis of the relationship between state and individual, and it is this relationship which concerns him as a sociologist.

"macro determinants need to pass through the cultural milieu to reproduce themselves at all." (Willis 1977 p171)

Willis avoids using the term "hegemony" because of debate over Gramsci's precise meaning. However the sense in which I have used
(4)

(4) See Anderson 1976.

hegemony is not incompatible with Willis's conceptual scheme. In this, the state is seen as the site of social reproduction, where the labour force is reproduced and disciplined in particular ways which serve the interests of capital. Willis's study shows how, through the family and the education system in particular, the state ensures that potentially rebellious working class boys end up in unskilled manual work, as a matter of their own deliberate choice. But it is not so much this fact itself, as Willis' sophisticated analysis of how it is achieved, that is important. He uses the concepts of "penetration" and "limitation", to construct an ethnography of the complex relationships between the culture of "the lads", the working class culture of their families and friends and aspects of the dominant ideologies of wider society. The adoption of subordinate roles is paradoxically experienced by the "lads" as success and as resistance. The "lads" are not simply brain-washed into consent nor do they accept their lot uncritically. There are moments when they "see through" the dominant ideology and resist (penetrations) and there are parts of their cultural resources which constrain the nature of this resistance, especially racism, sexism and the cult of masculinity and manual labour (limitations). The maintenance of hegemony is portrayed as an extremely complicated business. In this case, a swing in the balance away from "limitations" and towards "penetration", could result in a withdrawal of consent by "the lads". e.g. Increased unemployment amongst young people might cause such a swing. If the "limitation" of positive affirmation of the value of manual labour is removed because there are no jobs, this leaves more cultural space for 'the lads' to exercise those parts of their culture which penetrate and criticise the dominant ideology.

I want to use these concepts of "penetration" and "limitation" to examine the participation of the lay objectors in the Moss Moran inquiry. I would argue that in these circumstances, there would be some difficulty in securing consent. The lay objectors were articulate and educated. They were sceptical of the inquiry system. They were defending their private interests against those interests favoured by the dominant ideology of technical rationality. They were a group united in their opposition to the application who had deliberately chosen to take up the chance to participate in the decision-making process.

The scepticism, of the objectors can be seen as a partial penetration of the dominant ideology. This exists before the inquiry has even started. Yet they participated enthusiastically and diligently in the inquiry and at the end were no more sceptical than at the beginning.

My problem is to investigate what happened during the inquiry, how consent was secured and how legitimation operates in practice.

B. The Ideological Role of Law

"one could say that the effectiveness of law as an ideological force, as a means towards ruling class hegemony, depends upon its ideological encapsulation of a consensus constructed outside itself in other economic political and cultural practices." (Sumner 1979 p264)

This expresses the relative autonomy of law from other instances of the State and from the overdetermining economic base. (Poulantzas

1973) Sumner argues that law is more important as a coercive force than as an ideological force, which is why he emphasises that law should not be considered in isolation from other practices. I would agree that because most people in our society have very little direct contact with law, its ideological significance is therefore less direct than the family or education, but it is this function of law which is important in the study of lay participation in the public inquiry. In general, administrative law operates to secure legitimacy rather than by direct coercion.

I have argued that law is not the direct rule of the ruling class, and that legal rules provide real rights and liberties and offer real protection to the subordinate classes. Thus the fact that most people obey the law, respect its officers, and believe that law provides justice and protection against the arbitrary power of the state, is not because they are completely deceived, but because the law practises its rhetorical claims with sufficient frequency.

For the purposes of discussing the function of law in securing legitimacy, I want to distinguish legal rhetoric, legal rules and legal practices. Legal rhetoric consists of those claims for justice, equality, fairness, neutrality etc. which are made on behalf of "the law" by lawyers. These can be found in speeches, judgements, memoranda as well as in legal textbooks and statutes. Examples of legal rhetoric applying to public inquiries would be the Franks Report guidelines of

"openness, fairness and impartiality"

and the Circular 14 instructions to the Reporter to ensure

"the maximum informality of procedures"

Legal rhetoric is characteristically vague and ambiguous.

For the purposes of the inquiry "legal rules" refers to those procedural rules governing the conduct of the inquiry. I have argued that while there are rules governing pre and post inquiry procedures, there are few rules governing procedures during the inquiry. However, procedures at the inquiry generally follow the adversary procedures adopted in courts of law and I argue that the Reporter refers to the 'legal rules' governing evidence and procedure in his conduct of the inquiry even if it is only to allow lay objectors to deviate from these rules.

Legal practices are "the law in action". For the Moss Moran inquiry I am concerned with what happens during the procedures of the inquiry (and, to a lesser extent, with procedures before and after the inquiry itself).

It is not my intention to make general statements about the nature of these concepts or about their relationships. In my investigation of how legitimation operates in the social practices of the Moss Moran inquiry I am concerned with how the rhetoric of law and less importantly, legal rules, are reproduced in the practices of the inquiry.

I will look at the extent to which the opportunities afforded to the lay objectors to participate in the inquiry operate to secure their

satisfaction with its procedures and with those of the democratic process as a whole.

But I would argue, that the most powerful ideological work performed by law operates at a very abstract level. Despite a lack of direct contact with legal institutions or practitioners - members of this society reproduce common-sense or popular "images" of law which broadly resemble the "liberal democratic" model of law, which is in turn that reproduced in the rhetoric of judges, politicians, civil servants and which thus dominates the media. The mention of law generally elicits ideas of authority, justice, fairness, neutrality, independence, as well as ideas such as "professional", "complicated", "mysterious". These sort of notions about law have deep historical roots and as a result are both widely and stubbornly adhered to.

This is even more true of common-sense ideas about "law and order". Stuart Hall's (Hall et al 1978) work suggests that this consensus is being shifted to a more authoritarian position by a rhetorical assault from politicians and the press.

These general ideological effects are very important but in certain instances, law, just as education, has to pass through "the cultural milieu". When members of the public come into direct contact with the law, in the courts, or through members of the legal profession, law has to secure legitimacy in its day to day practice. In the next section I discuss some work that has recently studied "law in action", all with reference to criminal courts. This study is concerned with the public inquiry, part of administrative law rather

than criminal law. I would argue that because the inquiry system actively encourages lay participation, it must be unusually concerned to secure legitimacy. Carlen (Carlen 1976) argues that defendants play an extremely passive role in criminal proceedings, but when articulate objectors organise and present a case at a public inquiry one might expect the legitimacy both of the legal system and the political system to come under more serious threat. There are several reasons for this.

- (1) Having been given the opportunity to play an active role in the inquiry the objectors might have high expectations, both of the quality of their participation and its potential efficacy in securing their desired ends.
- (2) Active participation is likely to give laymen a much clearer idea of what lawyers do and how the law works. This may contradict their expectations.

In this section I have presented the outline of a theory of the state, and in particular of the relationship of Law and state. The need for such a conceptual framework arises from the deficiencies of the traditional liberal/democratic model of law, and from the impossibility of examining legal regulation without a model of the relationship between law and other social practices.

My aim is to examine how legitimisation is secured in practice by examining an institution where this ideological role of law has to operate very directly. The local middle-class objectors of Aberdour and Dalgety Bay were vigorously opposed to the development and, at the

least, sceptical about their potential effectiveness in the public inquiry. My problem is how at the end of the day, with the decision against them, and their scepticism justified, did the objectors come to accept the inquiry as neutral and fair. Whatever ideological effects law might have outside the inquiry, it still has to secure legitimacy through the practices of the inquiry; social structures have to pass through the cultural milieu.

A note on legitimation

At this point I want to clarify my use of concept of legitimation by a brief reference to the work of Max Weber. (Weber 1964)

According to Giddens, (Giddens 1971) Weber defines domination as

"those cases of the exercise of power where an actor obeys a specific command issued by another" (Giddens 1971 pl56)

The actor may be motivated by habit or self-interest to obey authority but for Weber the main motivation is a

"belief by subordinates in the legitimacy of their subordination."

Weber distinguishes three ideal types of legitimacy on which a relationship of domination may rest.

"Traditional", where authority is vested in the head of a family or tribe, "Charismatic", where authority is held by an extraordinary individual by virtue of exceptional personal character and "Rational

legal" where authority rests in a set of consciously and rationally devised norms administered by officials. The authority of the official is by virtue of his public office and is detached from any personal or private qualities.

Though in any society these three types are intermixed, in modern capitalist society rational-legal domination with its highly developed bureaucratic organisation is the most important. Authority is obeyed because subordinates believe in the impersonal norms which define that authority. An official in a bureaucracy has limited powers and duties and only authority exercised within these limits will be seen as legitimate by subordinates. It is the norms and procedures of the system invested in a particular official position, which are granted legitimacy rather than any personal qualities of the current incumbent.

The public inquiry is a part of the rational-legal bureaucracy and the rules and procedures governing the inquiry such as they are (see Chapters 1 and 4 particularly) invest the Reporter with duties, authority and discretionary powers. Amongst his duties, he has to assist lay objectors to participate in the inquiry by ensuring that "the maximum informality of procedures" are adopted. There is no further official indication of the nature of informality (see Chapter 4) but the Reporter has the responsibility of supervising and controlling participation in the democratic process which goes beyond the formal participatory rights of representative democracy as these exist in contemporary Britain. Though some of the objectors had a right to appear because of a property interest, all objectors who expressed an interest were allowed to participate. Thus the Reporter

is responsible for extending democracy in addition to his bureaucratic responsibilities of gathering all relevant information and conducting the inquiry in as efficient a manner as possible.

So, for the inquiry to be awarded legitimacy by the objectors the Reporter requires to do more than fulfill his narrow bureaucratic functions, he must also be seen to uphold the principles of democracy such as fairness, equality of treatment and freedom of speech. Weber argued that though democracy demanded the extension of bureaucracy, the two were almost inevitably in tension. Giddens comments

"For while the extension of democratic rights in the contemporary state cannot be achieved without the formulation of new bureaucratic regulations, there is a basic opposition between democracy and bureaucracy. That is, for Weber, one of the most poignant examples of the contradictions which can exist between the formal and substantive rationality of social action."
(Giddens 1971)

The aim of this study of the social practices of a public inquiry is to analyse how legitimation operates in practice. I provide an account of the manner in which the objectors perceive the inquiry as a legitimate exercise of power within a democratic system. One important fact is the way in which the Reporter copes with the often contradictory demands made of him. Thus it is important to take account both of the technical-rational function of the inquiry and of its broader political function as part of the democratic process, in securing legitimacy for the system.

I return to a discussion of the nature of the tension between

bureaucracy and democracy in the inquiry in Chapter 8 where I account for the ways in which the contradictory demands are managed during the course of the inquiry.

One problem with this model of legitimation is that it operates with a voluntarist model of the relationships between the individual and society. Weber implies that an individual act is caused by a belief in the legitimacy of the command in the same way as it might be caused by habit or self-interest.

This use of "legitimation" as an explanation of social action is criticised by Hyde (Hyde 1983) in a recent paper. He argues that no studies have demonstrated that "legitimation" in this sense, is a better explanation for social action than Weber's alternatives of habit or self-interest.

However, though Hyde rejects "legitimation" as an explanation for social action, he retains a voluntaristic and scientific model for sociology i.e. sociology should provide necessary and sufficient causal explanations for behaviour at the level of the individual.

The approach which I adopt in this study is more structuralist than voluntarist (see Giddens 1976) and attempts to provide useful descriptions rather than necessary and sufficient causal explanations which are not seen as appropriate aims for sociology in this model. Thus my model of sociological investigation differs from that of Hyde and so does my use of the concept of legitimation.

As I use the term "legitimation", it refers to the maintenance of
(5)
the consent required by a hegemonic power. That most people do not
engage in revolutionary or other deliberately disruptive behaviour
most of the time, that many value democracy and its institutions, that
many believe in the rhetorical claims of bourgeois law and behave as if they
believed that they are homologous with legal practices are all
examples of legitimacy. As I use the term, it signifies an absence of
unrest which has to be maintained and reproduced as an active process
in a wide range of social practices.

In this study I describe, through an analysis of a public local
inquiry, how legitimation operates in practice. I have not attempted
a necessary and sufficient causal explanation but a detailed
description of the contradictions involved in the maintenance of
hegemonic domination; an appreciation of the complex operations of
power.

Hyde is correct, "the law" is not monolithic, every part of the
system does not function to maintain the whole system, but the inquiry
does serve certain functions - this is to describe its nature not to

(5) My criticisms of Hyde's scientistic approach to sociology are
based on Rorty's (Rorty 1983) arguments for replacing epistemology
with pragmatism as a source of criteria for evaluating social
scientific inquiry. He argues that since knowledge is always
inextricably linked with interests the search for a neutral and
absolute basis for knowledge is an impossible venture. This implies
that knowledge cannot be separated from ethics i.e. any claim for
knowledge is also a political position. Thus the political basis of
knowledge must be acknowledged and made publicly available for
discussion. It is not a problem which can be removed. Rorty argues
that social scientific knowledge should

1. Describe situations thereby facilitating prediction and
control
 - and 2. Produce descriptions which help to inform political
practice
- footnote contd.

explain its existence. The inquiry itself does not produce the granting of legitimacy by the participants but it is the forum where this must be reproduced. To say that the inquiry does not produce legitimacy by itself does not mean to say that it does nothing to produce legitimation. I argue that several things happen during the inquiry which help secure legitimation. These need not have been explicitly designed to this end, we may not be able to measure the degree of effectivity or to specify the precise causal mechanisms by which they operate. I show that the objectors both believed the inquiry was a sham and yet participated enthusiastically. Thus there is no straightforward relationship between law, belief and action. Law both encourages and discourages, shows itself as fair and partial, objectors both believe and disbelieve. However at the end of the day, the Secretary of State's decision is made, the development goes ahead and the opposition are silenced. Thus the system has worked, it has secured legitimacy.

I want to use the concept of "legitimation" not to explain individual actions but as a description of certain functions performed by a public inquiry. Not a "functionalist" explanation, but a description of functions performed. I want to show the complex process of structuration; to show that social reality is an active

(5) contd. Thus the pursuit of knowledge is seen as the search for a vocabulary which might help with particular problems. Our moral nature has to be accepted as "just that" and not something which can be conveniently set aside.

In this work I aim to produce a description of how power operates in the (social) practices of the inquiry. I argue that it is important to understand this in order to select political strategies designed to secure more "meaningful" lay participation. This seems to be consistent with Rorty's prescriptions.

construction; that it can be fragile - i.e. that dominant ideologies can be penetrated; that there is potential for political changes that neither the state nor its institutions are monolithic.

Hegemony in Crisis

I am concerned with part of the ideological function of law in the reproduction of consensus at a time when many writers have described the capitalist State as being in a crisis of hegemony.

Stuart Hall (Hall et al 1978 p212) describes some of the characteristics of the "aggressively interventionist" State which was constructed in the years after 1945. There are a variety of interventionist tendencies.

- (1) Direct action in the economy e.g. public ownership, development grants.
- (2) General attempts to control the economy, e.g. demand regulation, prices and incomes policies, interest rate control. Despite the claim by the Thatcher government that they want to allow the economy to operate by the free play of market forces, their attempts to control inflation by controlling the money supply and increasing unemployment are an example of State intervention in the economy to attempt to secure the interests of particular sections of society. This is presented as "good housekeeping" in the national interest.
- (3) The growth of the Welfare State providing health care and a variety of social benefits can be seen as an essential part



of the State's role in the reproduction of the labour force as can (1).

(4) The growth of a State education system.

(5) The State has also, according to Hall, intervened ideologically to represent itself as a consensus, social-contract, corporatist enterprise. We are encouraged to believe that the State acts in the common interest of us all and that it is therefore better for groups and interests which are in conflict to reach some agreement between themselves in the interests of all. Conflict is now not an inevitable part of a democratic society but something which is contrary to the common-interest and counter-productive. This notion is widely applied to industrial disputes, where the State attempts to put ideological pressure on trades unions to compromise. (The "quango" ACAS is quite openly used in this respect to manufacture consensus.) Other parts of this corporatist ideology include a belief in economic growth, the technical management of the economy, and the spread of opportunities for all.

(6) There has in general been a shift of power from the legislative (i.e. Parliament) to the executive (the civil service). Partly because of the amount of work, its complexity, the volume of relevant information, and the specialised and technical nature of some of this, parliament makes decisions based on information which has been pre-digested and pre-structured by Whitehall departments according to criteria which might be very vague. In Lukes

(Lukes 1974) terms, Whitehall can exercise power by their increasing control over the content and form of the agenda.

- (7) Quite apart from internal intervention, the State is involved in negotiation both with foreign States and trans-national corporations as part of the management of the international economy. In the post war years this arena has rapidly come to be of crucial importance.

There are many other writers who, though they have different aims and employ different methodologies, share Hall's basic description of the changing nature of the State e.g. Winkler's (Winkler 1975) 'corporatism', Kamenka and Tay's (Kamenka and Tay 1975) 'Bureaucratic/Legal' administration, Poulantzas' (Poulantzas 1978) 'authoritarian statism', Poggi's (Poggi 1978) 'compenetration of State and civil society' and Habermas' (Habermas 1976) 'technical/national domination'. All would agree that central notions
(6)
of liberal/democratic theory such as "the rule of law" and "the separation of powers" are no longer plausible accounts of the complex network of relationships which forms the modern State, nor would they accept that this theory can account for the redistribution of power which has left the State and certain interest groups and corporations in a powerful position while the back-bench M.P. has become virtually powerless in comparison.

The main function of the State is to reproduce those social relations which are necessary to further the interests of capital (in

(6) This point is made by Prosser (Prosser 1982)

the last instance). As society becomes more complex and as the capitalist economy becomes more unpredictable and unmanageable, Hall argues that

"In this new form of an interventionist capitalist State, the securing of popular consent is more than ever its only basis of legitimacy." (Hall et al 1978 p214)

Hall is particularly concerned with the "crisis in hegemony" which is manifested by the disruptive behaviour of certain sections of the young black population, and by the State's reaction to (or even production of) this behaviour. However, as I have argued, the law requires to secure legitimacy for itself and for the State in a range of other situations, one of these being the public inquiry. I argued in the first section that the inquiry system has been subject to criticism from lawyers, social scientists, administrators, pressure-groups, and "ordinary" lay members of the public. It is arguable that the inquiry-system, or at least parts of it are in crisis and that this situation has been and continues to be highlighted by the growth of critical study.

I have argued that law cannot be examined without a plausible model of its relationship to the State and of the changing nature of the State in contemporary society. I have also begun to suggest the conceptual framework necessary to study "legitimation in action" which emphasises that structural determinants need to pass through the level of action, and it is to this level that I address myself next.

Law in Action

In recent years there has been a growth of work within "socio-legal" studies, concerning the study of "law in action" e.g. the daily procedures of courts, police work. Sociologists have been
(7)
concerned with the study of social interaction in "formal settings" for long enough. These "interactionist" approaches, however, have restricted their focus to the particular setting in question. Explanations and accounts of behaviour are expressed by reference to particular features of the setting. Thus Blau (Blau 1955) provides accounts for the practices of the office staff by referring to specific features of bureaucratic organisations. In a legal setting, Garfinkel (Garfinkel 1956) accounts for the treatment of defendants in court by referring to organisational features of court practice.

However one significance of the analysis of law and state presented in the previous section is that no longer can sociologists provide explanatory accounts for social behaviour which are based solely at the level of interaction or organisation. Individuals, groups and organisations all exist within particular social, political and economic structures.

It thus seems important for sociologists to examine detailed social interaction with a specific social configuration. We need to know how social structures are produced and reproduced in social practices. It is this level of analysis which is crucial for those who want to make political interventions. Our capacity to rationally

(7) Garfinkel 1956 Emerson 1967 Blumberg 1974, 1967(b)
Cliourel 1968 Bottoms and McLean 1976.

change our institutions and organisations with predictable outcomes is limited. We therefore need to understand the limitations in each instance by specifying the relationship between the day to day procedural practice of a form of social organisation, and the social and political context within which it is set.

In order to clarify the methods and objectives of my own study of public inquiry procedures, I want to consider critically three recent works dealing with "law in action" two of which (Carlen 1976 McBarnett 1981) attempt to show this relationship and one (Atkinson and Drew 1980) which by ignoring the relationship shows how important it is.

For Pat Carlen, (Carlen 1976) Magistrates' Courts are experienced as unreal and absurd by defenants, they feel helpless, hopeless and manipulated. They are prevented from telling their story except in a specific manner at the appropriate time. The social reality of the court is constructed by the "regulars" - those members of the court personnel who are there daily. The language of lawyers, social workers, probation officers, and police officers, dominates, to the exclusion of the 'restricted code' of the defendant. The rituals and structured exchanges in the court room operate to silence the defendant. Carlen argues that such exclusion is a necessary feature of

"the set of social relationships which emanate from and protect the institution of private property and the prevailing mode of capitalist production." (Carlen 1976 pl2)

"Justice" in capitalism has to be mystified to conceal its injustice and the injustice of the system which produces it. She therefore describes the court as

"an institutional setting changed with the maintenance and reproduction of existing forms of structural dominance." (Carlen 1976 p38)

So for Carlen the court is a site where the structures of our society operate in practice. An analysis of what happens in court must refer both to the relevant structures of society as well as to properties of the interaction of the participants. By these intentions, at least, Carlen adopts Giddens' second primary task of sociological analysis.

"The explication of the production and reproduction of society as the accomplished outcome of human agency." (Giddens 1976 p162)

Giddens' model of social relations is based on a dialectical relationship between intentional action and social structures. Structures not only constrain action but also enable action. The implication of this model is that a sociologist must examine the relationship between action and structures in a given context. How is structure reproduced in action? How much 'freedom of choice' is available for intentional action?

Carlen seems less concerned with these questions, than with describing the absurdity which resides in the difference between "what happens in court", and "what is supposed to happen in court", i.e

between the practice of law and the rhetoric of law. The rhetoric of law is contained in the "formal" rules of law both substantive and procedural e.g. in the notions of "due process" "innocent until proved guilty", "the onus of proof resting with the prosecution", "better to free ten guilty men than to find one innocent man guilty" etc.

The "practice of law", however, is a function of the strategies of those court actors structurally invested with power i.e. magistrates, lawyers, the police, probation officers, specifically excluding the unrepresented defendant. What happens in court is determined by the "informal rules" negotiated and operated by these personnel. Carlen wants to argue that the "justice" promised in the notion of the "Rule of Law" is not achieved in practice. She suggests that the "informal rules" of the participants maintain the inequalities of a capitalist society by coercion. The defendant has no voice in court and his identity is manipulated by other participants using it to further their own professional interests. However one result of these informal practices is ironically to re-affirm the rhetoric of law. The decisions of the Court are seen as absolute, objective and essential, and any threats to the legitimacy of the procedures of the court are silenced by "remedial routines", i.e. the defendant's attempts to give accounts are typically disallowed as inappropriate for a number of reasons.

We are left with the absurdity of the gap between rhetoric and practice. Seen in the context of some of the claims made of the doctrine of 'due process', the daily practices of the courts are presented as absurd.

In "Conviction", Doreen McBarnett (McBarnett 1981) takes Carlen's arguments further. She argues that Carlen, despite her stated intention to link the levels of "structure and action", concentrates too much in her text on the "informal rules" which she locates as originating in the day to day negotiatory procedures of the courtroom. In defence of Carlen one could argue that the interests which inform participants in these processes reside in the organisation of their professions, and their perceptions of the operation of the court, both of which could be described as elements of social structure, however I would agree that Carlen does not make clear conceptual links between the informal rules and their structural sources, though her analysis is, in fact, dependant on this relationship.

McBarnett argues that this gap between the rhetoric of law and the practice of law, described by Carlen, is not only due to the informal game playing of the participants but can in fact be explained by reference to the form and content of the law itself. The police procedures following apprehension of a suspect, the prosecution system and the rules of evidence and procedure, are all designed to secure a conviction and this, according to McBarnett, contradicts the rhetorical claim of due process, that a man is presumed innocent until proved guilty.

Though in Chapter 1, McBarnett describes her work as complementary to that of Carlen, throughout her text there is the implication that Carlen's informal practices are less important in determining the outcome of the prosecution process than the form and content of the law. Those rules and procedures which Carlen described as relatively fixed, unambiguous and "formal", McBarnett sees as

malleable, open to discretionary interpretation and flexible. Thus Carlen's distinction between "abstract" and "situational" rules becomes blurred. McBarnett's analysis seems to imply that law is a flexible process and far from a fixed absolute set of formal rules, though she also wants to use law in an absolute sense in as much as law guarantees a high rate of conviction in the courts (8).

The work of these two writers on "law in action" raises a number of crucial questions for further work in the field.

The first concerns the relationship between action and structure. In Giddens' terms, these are analytically separate concepts which are in practice, inseparable. Carlen declares her intention to deal with the informal rules governing action, as if these were somehow distinct from structure and uniquely situated at the level of action. She seems to suggest that situational rules are produced from scratch, as it were, in each separate courtroom practice; that situational rules are unpredictable and specifically tailored to each unique circumstance. Given Carlen's definition of "abstract" and "situational". I would argue that they are both structural, in Giddens' sense, in as much as the meanings and principles governing the operation of the "situational" rules derive from the professional interests of the various groups involved, which can be further located in their relation to the economic and political functions of the State. Though the "rules" might be negotiated and mediated in the daily practices of the courts, their origins are structural. Thus,

- (8) For McBarnett it is precisely this flexibility of law which is characteristic of its form and which achieves its objectives of legitimating the maintenance of the interests of the dominant class.

though situational rules may be less public, more flexible and more negotiable than abstract rules, (though McBarnett would not agree) they are both structural resources. Any shared rules are structural in that sense.

McBarnett seems to recognize this, though without realising it. Her analysis of the form and content of law is inextricably linked to their practical operation, see, for example, her discussion of "the right to silence" (McBarnett 1981 p53), where, quite clearly, the effect of the rule is due as much to its implementation by lawyers and magistrates, as by its precise content. Her discussions always concern the relationship, then, between action and structure, though she claims that her concern is with the form and content of law as structure.

Thus despite McBarnett's claim that her work is fundamentally different from Carlen's, both writers are concerned with how structure is produced and reproduced in action. Their problem is that they do not specify the relationship with adequate clarity.

What significance does this have for the notion of "ideological gap" that both writers use. They both want to argue that there is a difference between "what the law does" and "what the law says it does". It can no longer be that there is a gap between respectively, action and structure. We have seen that both writers deal with the inextricable relationship of the two levels. If "abstract" rules can no longer simply be "what the law says it does", because they are also concerned with what the law does, the same goes for "situational" rules which, in any case, share many properties with abstract rules.

Is there any important distinction to be made? Both Carlen and McBarnett are dealing with the legitimating role of law, or more precisely, legal rhetoric. For Carlen it is significant that despite the bewilderment and absurdity perceived generally by defendants, the system continues to run smoothly without challenge. For McBarnett, the surprise is that people believe that "due process" preserves the status of the defendant as "innocent until proved guilty", when there is such a high rate of successful conviction in the criminal courts. This "dissonance" is managed within the form of law itself. By this, I understand McBarnett to mean that law "in action" both makes rhetorical claims about justice and practically ensures that these claims are never actualised. This is due to the flexibility that is the "form" of law, as well as to the "informal" practices of the participants and the class based nature of law.

While I would agree with McBarnett's insistence on the importance of "the form and content of law", I do not agree that this can be considered separately from "informal-practices" or "the class-based nature of law". And in fact McBarnett does confuse them in her analysis. Part of the confusion created by her analysis is that she is not dealing solely with the 'form' of law but with the relationship between the rhetoric of law, the form of law, the content of law, and the practices of its participants, in the lower courts of criminal justice e.g. the ambiguity and flexibility of the use of precedent is inseparable from the practices of judges. Her discussion of "the right to silence" (p53) shows clearly that the practical application of this piece of legal rhetoric is ambiguous due to the interpretations of judges. Thus though there exists a common law right to remain silent after arrest (i.e. an accused person is not

obliged to communicate himself) the interpretation of this silence in particular circumstances might indicate guilt rather than protect the presumption of innocence.

In this case the "flexibility" is due to the interaction of the rhetorical "right to silence" (McBarnett 1981 p53), and the interpretative practices of judges. To then describe this as "the form of law" as if it was something different from rhetoric or practice, seems to me to add unnecessary confusion.

There is a further problem with the notion of the "ideological gap" which exists, for both Carlen and McBarnett, between the rhetoric of law and the practice of law. Though McBarnett herself describes due process as existing

"in the dizzy heights of abstraction"
(McBarnett 1981 pl56)

both she and Carlen seem to be comparing what actually happens with what should happen without specifying the conditions under which the latter is practically conceivable. As McBarnett herself says.

"the law cannot allocate equal rights in an
unequal society." (McBarnett 1981 pl67)

The law is class-based, its claim to treat all equally is a myth. Law constitutes the liberal-democratic model of society and secures legitimacy for this model ideologically, by presenting itself as neutral and just. I have argued that law operates to secure the interests of a few and to present these as the interests of all. What we

need to know is firstly, how the law operates, how it legitimates itself and secondly what sort of changes can be made to reduce the more blatantly oppressive inequalities of law. McBarnett claims to be surprised at the high rate of conviction given that law is supposed to protect the accused. The criminal justice system is a technology precisely designed (as McBarnett herself demonstrates) to ensure a high rate of conviction. How else could it operate? Why should we imagine that there would be an equal proportion of "innocent" to "guilty" accused persons? Of course, (as McBarnett again points out), the categories of "guilty" and "not guilty" are legal constructions which only bear a relation to "the real world" and do not mirror it. McBarnett talks about law "redefining" proof and truth - law, however, is a technology - i.e an apparatus designed to secure certain ends, and to produce certain sorts of knowledge to further these ends. It is not a science which has absolute access to the truth of social relations. Law needs criteria on which to base decisions. it has practical interests, it is a technology. McBarnett's surprise at its success is misplaced, especially when she describes its procedures in such detail. McBarnett does not describe what procedures she would employ to actualise the "rhetoric of justice". I would argue that those procedures she selects would produce a different set of criteria for the ascription of the categories of "guilty" and "not-guilty" but these would still be criteria imposed by the law; legal constructions which constitute the event as "relevant event" for legal purposes. There will always be a gap between the constructed "legal truth" of a matter and the "whole truth" of the matter, whatever procedures and criteria are adopted in order to determine the latter. McBarnett seems to suggest that law is unjust because its procedures for establishing "truth" are "partial" rather than "absolute". I would

argue that it is not these procedures in themselves that are unjust.

(9)

Injustice arises because law preserves certain interests, inequalities, hierarchies and distributions of power in society. It is the relationship between the power structure which underpins law and the knowledge which law produces which results in the production of "actual" injustice. This is presented as 'justice' produced by the disinterested pursuit of truth.

The notion of "ideological gap" depends on an empirical knowledge of what "the people" believe and perceive of law. Neither Carlen nor McBarnett come anywhere near an adequate description of this. McBarnett simply asserts that people believe in due process, justice and the rule of law. She takes it for granted. From Carlen's work, we can say that she describes defendants as baffled, alienated, manipulated and dehumanised. We never know what beliefs they have of law. Perhaps the very fact that they do not protest suggests that they perceive law as legitimate or intractable. Do ordinary people perceive the ideological gap? or do they see no difference between rhetoric and practice? Is this the success of legitimisation; the fact that no gap is perceived? What is the political significance of this? These are some of the questions that this study sets out to address.

While it is important to demonstrate that the criminal law is a means of securing a high rate of conviction, this should not imply that legal procedures are, on their own, the cause of injustice. The procedures are designed to be as sure as possible that someone who

(9) I argue in Chapter 8 that absolute truth is a chimera in any case. See Rorty 1983.

has not done that of which he is being accused is not found guilty. This is not the same as doing everything possible to ensure that someone who has done that of which he is being accused is found not guilty, which is another way of putting McBarnett's notion that the system bends over backwards to protect the accused.

The findings of this study would suggest that Carlen and McBarnett's own unarticulated definitions of justice, equality, etc. (the components of the rhetoric of law) are much more idealistic and utopian than those of "the general public". For example, the lay objectors were well aware of injustice and inequality and were prepared to accept certain levels of both as being the "realistic" actualisation of the rhetoric of law i.e. their notion of substantive justice was not a utopian model.

If the law constitutes and protects the asymmetrical social relations of the capitalist state, its organisational and procedural forms will generally reproduce this asymmetry. If the layman who comes into contact with the courts understands this in some inarticulate way, then we should expect sociologists to do more than demonstrate ironically the gap between reality and utopia. The empirical research of Carlen and McBarnett ought to be used to examine the relationships, in particular contexts, between the various structures of law, other structural resources for the actors in court, both lay and professional, and the day to day interaction in the courtroom. Much of McBarnett's work does precisely this, but her constant theoretical emphasis is the primacy of her confusing concept of "the form of law". In the same way Carlen's work addresses these same issues, but her conceptual emphasis is unhelpful.

A presentation of "the ideological gap" between the rhetoric of law and the practice of law, may demonstrate the mystificatory nature of ideology. If however we have an interest in influencing or informing political practice, then we should stop marvelling at the existence of this gap and proceed with more detailed analysis of how it is manifested in the construction of social reality in particular instances e.g. are the objectors in the Moss Moran inquiry aware of this gap? Law preserves inequality but not all law and not in every institutional practice. Some of its practices may indeed reduce inequality, protect the less powerful, or, at least provide potential space for change.

I have argued that both Carlen and McBarnett have concluded that there is a gap between the rhetorical claims of law and the social practices of law. They want to be able to use this analysis to help close the gap. Both writers assume that the rhetoric of law, which is utopian, can be achieved in practice. They claim to be studying the social process from the point of view of the relationship between action and structure. However, to propose, even implicitly, utopian alternatives to existing social relations is to misunderstand that relationship. My analysis of the Moss Moran inquiry demonstrates some of the complex ways in which structural power operates in social practices. The implication is that in order to change social practices, social structures have to be changed; the distribution of power has to be altered.

Atkinson and Drew (Atkinson and Drew 1980) seem to share this criticism of writers who propose utopian alternatives.

They comment

"Sociologically derived recommendations are often unashamedly utopian and unconstrained by any regard for the possibility that an organisation might place practical limits on dreams of an ideal world."

The suggestion here is that there are limits to potential social organisation within existing social organisation. They acknowledge the importance of mundane, everyday organisation on the construction of social reality. They are critical of those sociologists, particularly Carlen, who seek to analyse court procedure by comparing it ironically with "normal interaction". Their first point is that since the significance of any social action is inextricably linked to its context, it is easy to produce absurdity by placing action in a different context. Court procedures "make sense" when they are understood within the context of the form and content of law and the training of the legal profession but can easily be made to look absurd by comparing them with conversational practice in everyday interaction. For Atkinson and Drew the two are different techniques for different situations; to compare one with the other, as if they might somehow be interchangeable, is to ignore the importance of mundane organisation to the construction of social reality.

They argue that

"orderliness is the product of the unexplained and taken for granted procedures of practical reasoning used by members."
(Atkinson and Drew 1980 p16)

They are concerned with the day-to-day construction of social order, and particularly with language use as one of the fundamental resources for making sense of the world. They note

"the fact that talk....(is)....situated in particular contexts has been a perennial problem for all those who have tried to design some rule or definition for general application and for those whose task it is to apply them to particular settings."
(Atkinson and Drew 1980 p7)

Atkinson and Drew, following Garfinkel (Garfinkel 1967), want to study social order, by looking at how conversations are built up; conversation being a basic and elementary example of the construction of social order in interaction.

The problem is that language is indexical; i.e. it always refers to something other than itself; to the world or, as Garfinkel would put it, to the auspices and procedures which produced the talk as a social construction. All accounts then, whether everyday talk or sociological analysis, are indexical. For Garfinkel this is constitutive. Sociologists are then faced with the problems of relativism; (how can we say one account is better than another?) and reflexivity or infinite regress; (how can we deal with the notion that there is no absolute authority to grant significance to our talk).

In my view, these problems are important and have to be faced by any social scientist who wants to make statements about the social world. There are no absolute solutions to these problems, rather they

describe the epistemological boundaries within which social scientists have to operate.
(10)

Despite their awareness of these problems, Atkinson and Drew operate by pretending that they don't exist. Their search for the formal properties of conversation ignores the context of the talk. As "conversational analysts", the precise source of their data is unimportant, they are concerned with the formal properties of "any conversation". In this sense, the court setting of their data in this book is at best marginal, if not irrelevant. Despite their claims, correctly echoing Garfinkel, that speech is indexical and always refers to its context and the methods of its production, they ignore the context and concentrate only on those properties of the methods of its production that they consider to be formal properties of conversation.

If all accounts are relative and infinitely relexive, then, according to Atkinson and Drew, sociologists have no justification for claiming that their accounts are any better than those of ordinary members. If we accept that the very nature of language is responsible for this "restriciton" on the activities of sociologists, then, as a sociologist, my intention would be to use language, not to found an absolute scientific method, but to describe and justify the use of particular concepts and methods. (11)

(10) Rorty (1983) argues for a pragmatic response to the impossibility of epistemological certainty.

(11) See Giddens 1976 p 162 "The 'double hermeneutic' is treated as an inevitable resource for sociologists. They have to accept that the process of understanding is circular and is not either progressive nor based on some absolute 'knowledge'. See also my further comments in Chapter 8 of this study concerning the aims and scope of sociological investigation.

Atkinson and Drew, resort to a radical and naive empiricism, which takes any talk out of its context and proceeds to analyse this data using "the methods of ordinary members" ("What everybody knows"). I would argue that their description of relativity logically implies that "everyday members practices" have no greater claim to authenticity than any sociological account. For Atkinson and Drew to rely on "everyday practices" means that their work has no more status than common-sense, and that they deal with the "fundamental" (Atkinson and Drew 1980 p6) problems involved in "doing social science" by ignoring these problems. It is ironic that after subjecting sociologists to criticism for their lack of rigour, their scientism and their lack of awareness of specific methodological problems, that they themselves should resort to a kind of common-sense empiricism masquerading as a science. Having shown that there is no absolute epistemological base for social scientific work, they behave as if they have found one. All they do is take "common-sense" for granted and use all sorts of sociological and political assumptions (about meaning, motive interpretation, intention, social relationships in situational settings and so forth) which more perceptive sociologists would recognise as cultural resources and would subject to criticism. It may be useful to know the formal principles of the organisation of speaker-sequencing, but this is only a very minor part of the construction of social reality. Atkinson and Drew are aware of the limitations of their work. They are content to study the way we build up conversations avoiding either complete silence or everyone talking at once by orienting to the rules of "one at a time" and "speaker selection". This may turn out to be fruitful work but it certainly cannot replace the important broader aims of sociological analysis, which must face up to the

methodological and political contradictions of social relations rather than ignore them, which seems to be the case with Atkinson and Drew. In criticising sociologists for ignoring the formal properties of social organisation in their attempts to derive generalised rules governing social relations, Atkinson and Drew ignore the political, historical and cultural context of social action in pursuit of some decontextualised formal properties governing that action. It is precisely the relationship between action and structure which should concern sociologists. They should not be attempting to assert causal or epistemological priority of one over the other, nor should Atkinson and Drew accept that the task of sociology is to derive generalised rules governing social relations. It is their own commitment to this form of behaviourism which leads them to a fruitless search for "fundamentals."

In a sense while ostensibly making claims to be studying the construction of social reality in a courtroom setting, and thus contributing to the work of Carlen and McBarnett, Atkinson and Drew have very little to say about the organisation and work of the courts or of law in general. Their work is marginal to the sociological enterprise and the fact that their data is from a legal context is of no significance to their analysis.

Thus for Atkinson and Drew the "limits" to Utopian recommendations in existing social organisations (see p61), turn out to be not social or political but linguistic, the formal properties of conversational use. I have argued that this definition of context as an attempt to repair the indexicality of speech is a fundamental misunderstanding of crucial and methodological questions which face

all social scientists. Atkinson and Drew draw attention to these questions but ignore them in their analysis. These questions concern the relative status of sociological accounts and those of ordinary 'lay' members, and the inevitable indexicality of speech and action.

In his attempt to describe a methodology for sociology which confronts many of its major critics, Giddens (Giddens 1976 Chapter 4), discusses these questions at some length. I will very briefly rehearse the bones of his argument here. Both the notions of 'relativity' and 'indexicality' contain the idea that meaning is dependent on its context. Giddens notes that discussion of "paradigms" or "forms of life" has tended to assume that they were internally consistent, incommensurable, and unaffected by external social and political influences. He argues that these assumptions do not necessarily hold and presents a model where "forms of life" mediate each other. To understand an 'alien' form of life one has to immerse oneself in its structure and attempt to understand the structure of significance, in terms of other forms of life that are more familiar. In other words, all understanding is metaphorical.⁽¹²⁾ Because each form of life may be allowed authenticity does not mean that it has to be given an equal value, to use Giddens' example - the Azande believe rain is caused by the Gods - as western sociologists we can acknowledge this belief, we can attempt to understand the significance of this belief for Azande culture and analyse its importance for Azande social relations. However we can still claim that meteorology provides for us, a more embracing, useful, and credible version of the cause of rain. This is not to say that ours

(12) See Hollis and Lukes 1982 passim.

is true and the Azande's false, the notion of mediating forms of life does not entail this form of absolutism. The absence of a theory-free, neutral, observation language, does not condemn as to silence, rather it directs us to hermeneutics, the understanding of structural relationships. In the absence of any absolute and fundamental basis for "knowledge" we can assess knowledge claims not by how closely they approximate to some absolute "reality" but on pragmatic criteria such as how useful it is for the purposes we have in mind? (see Rorty 1983)

Sociology, unlike the natural sciences, has the problem of a "double hermeneutic." The world which the sociologist seeks to describe, is already a pre-interpreted social world, and, what is more, that world is shared by sociologists as "ordinary members". Atkinson and Drew's reaction to this is to give up being sociologists, relying instead on their "common sense" resources as ordinary members, but, as Giddens points out, "common sense" is, at least in part, a set of theoretical assumptions and ideas about the world which have their origin in the works of "men of ideas" and more broadly in the history of social relations, and not some sort of accumulated "basic" human experience whatever that might be. (see Giddens 1976 pl15) Common-sense knowledge is a theoretical "form of life" and so has the same formal status as sociological models of the world. One of the points made by ethnomethodology was that all members of society "do sociology" in the process of their everyday work in constructing social reality. The task of a sociological theory is to mediate between "common-sense" ways of looking at the world and its own concepts and metaphors. Atkinson and Drew want to restrict sociology to common-sense methods and thus reduce the "double hermeneutic" to a single hermeneutic.

It is easy for sociologists to react violently and perhaps unfairly to ethnomethodology. As Giddens points out ethnomethodology (13) raises important methodological questions which cannot be ignored by the discipline. However, as I have argued, "conversational analysis" at best may provide us with some data about the formal properties of conversation, but there are major criticisms of its own methodological stance and very severe limitations on its usefulness as a form of knowledge. It doesn't tell us much and what it tells us is of very little political use, regardless of one's political position.

In this section, through a critique of work by Carlen and McBarnett and also by Atkinson and Drew, I have tried to demonstrate the importance of preserving the relationship between social action and social structure, and to clear up some conceptual confusions which I found in the work of these writers. To conclude this chapter I want to return to the structural aspects of law and set out in the light of this analysis, the aims of the main body of my study.

As E P Thompson (Thompson 1980) points out, the use of representative democracy, the rule of law, trades unionism, etc. have provided "real" freedoms and protections to the citizen. Though in one sense "representative democracy" is an ideology which has allowed the domination of bourgeois cultural hegemony to exist, it has at the same time constructed conditions which may permit that hegemony to be challenged. Civil society in Western capitalism does provide opportunities for individuals and groups to challenge dominant ideas - in many cases these opportunities may be illusory, in many the

(13) See Burton F. 1980.

challenges may be completely unsuccessful - but the opportunities exist. Western democracies are based on an ideology of freely given consent which has at least some relationship with practical outcomes, but there are "gaps" where competing ideologies can threaten the dominant ideology. e.g. the rhetorical claims of "openness fairness and impartiality" are made for the public inquiry, presenting the ideology of free democratic participation. One of the aims of this work is to examine the extent to which this ideology is reproduced in the inquiry and where the gaps, if there are any, exist for critical penetration of the dominant ideology. In Anderson's (Anderson 1976) presentation of Gramsci's ideas concerning the relationship between State and Civil society, we are given a conceptual framework for an empirical investigation of 'the limits of freedom'. Representative democracy is an ideology; that is, a theory of the relationship between the individual and the state, and a justification for the use of this theory. In practice the social world is much more complex, power is unequally distributed, social practices take place in specific contexts (historical, political, bureaucratic) and so on. Thus the ideology of freedom is reproduced in the inquiry because participants act as if they were free. The belief in freedom makes the freedom real because it is real in its consequences - the reproduction of the dominant ideology, the award of legitimacy and the maintenance of hegemonic domination. The ideas of the freedom and uniqueness of the individual, the responsiveness of parliamentary democracy, the justice and rectitude of the rule of law - are reproduced - most people still construct their model of their society on the basis of these sorts of assumptions. And, because the state does not rule solely by coercion, nor simply fills up peoples heads with the "correct" ideas, people must, to some extent, perceive the ideology

actually working in practice, e.g. not only must the rhetoric of justice be proclaimed by judges, lawyers and the media - but the public, in the courtroom must experience justice being done. If Carlen's analysis of Magistrates courts was taken as an accurate description of the peoples' perceptions of the procedures i.e. if they all experienced the process as absurd and without meaning - there would be mass social unrest tomorrow. Any social practice can be described as absurd, if it is viewed from an inappropriate context.

The important point is that magistrates courts (and public inquiries) have several contradictory objectives. They must present the law symbolically, that is, the rhetoric of justice according to the rule of law. They must accomplish the technical tasks for which they were designed (high rates of conviction, the approval of planning permission). These tasks may potentially be seen as unjust, unfair and exploitative by critics and are thus usually tacit and unpublished. They must fulfill those formal procedures which preserve the rights of individuals and thus, as it were, display the rhetoric in the practice. The liberal democratic ideology of "justice according to law" will be more dominant, more fully or exclusively reproduced in some legal institutions than others. To what extent is it reproduced in the public inquiry?

The questions raised can only be answered by empirical investigation. This is the study of 'legitimation in action'. The level of "freedom" available in a context e.g. the extent to which lay objectors can use the inquiry to achieve their aims, or to arouse public opinion, contribute to the process of decision making or exercise their democratic rights, can only be established by looking at a particular instance in detail. Similarly the degree to which people

are constrained and the social structures which contain these constraints can only be established empirically.

The degree of "freedom" really depends on the extent to which the dominant ideologies can be penetrated by competing ideologies. Just what these ideologies consist of and where they are structurally located are problems I address in chapter 7.

This work, then, is an exercise in theoretically informed empirical sociology. To study, in a non-reductive way, the mundane procedures of daily social practice in their political, historical and social context, from a perspective which uses concepts which enable the writer to move around the complexity of the social process, from structure to individual, from practical meaning to ideology in a way which preserves and illustrates the inevitable contradictions.

This analysis will then be compared to the critical work on public inquiry procedure discussed earlier in the introduction and I will examine the extent to which their procedural reforms are practically attainable, and which aims of the enquiry they serve, in the light of my analysis of the Moss Moran inquiry.

Having introduced the study, I should now describe how it proceeds.

Chapter 3 describes the formation of the action group and the nature of the subject matter of the inquiry, and also summarises the

(14) See above pages 13-20 and for a fuller comparison see Chapter 8.

conduct of the inquiry and what it was like to be there. The purpose of this descriptive material is both to help the reader understand the more detailed analysis which follows and also to substantiate arguments which I make in subsequent chapters.

The bulk of my analysis of the procedures of the inquiry is in chapters 4 to 7. In chapters 4, 5, and 6, I attempt to reconstruct the methods by which the reporter, the lawyers and the experts participate in the inquiry.

Chapter 4 deals with the Reporter's direction of the day to day proceedings of the inquiry. I look at the Reporter's operational distinction between formal and informal procedures, and how this distinction relates to both lay participation and the construction of knowledge. In chapters 5 and 6, I am concerned with the criteria used by the Reporter and lawyers to describe what constitutes a relevant fact in the inquiry; the criteria for ascribing 'relevance' and 'facticity'. I argue that the control over the procedures of the inquiry is inextricably linked to its function of knowledge construction. I am particularly concerned with the methods used by the Reporter to move from the instructions, procedural hints and institutional and professional principles to the day to day practices of the inquiry, and the link between his role as fact-finder and supporter of lay participation.

In chapter 7 I deal with the participation of lay objectors. I argue that they have a completely different approach to the inquiry from the professionals, that their actions reproduced a wider range of structures and ideologies, and that their award of legitimacy is

delicately secured by their ideologies of respect for authority, and reasonableness. These ideological beliefs are encouraged by the inquiry system itself and in particular by the attitudes of the Reporter. Chapter 8 summarises the main points of the thesis and defends the model of sociological analysis adopted in terms of its utility for contemporary political practice.

CHAPTER 3

The Moss Moran Inquiry

In the general scheme of the study, this chapter serves several functions.

Given the detailed nature of much of the later analysis, I think it is important to describe, at least in outline, the nature of the proposed development and the proposed site. For a similar reason I also describe the conduct and organisation of the inquiry itself, a typical day's proceedings at the inquiry, and some of my own general impressions based on daily attendance at the inquiry.

This information was culled from my own daily observation of the inquiry, interviews with participants, publications produced by the participants as evidence and press reports. It describes the narrower political and social context within which I locate the detailed analysis of the transcript which follows. Thus this chapter is, at the same time, evidence in support of my arguments, and a resource to help the reader understand my analysis. If the introduction attempted to set the inquiry in a broad political context, this chapter attempts to provide the more local context.

I also discuss the history of the planning application, and the formation of the Action Group, and make some comments on the contemporary political background, both at a national and local level. The inquiry itself is only part of a much wider political process. Its effects will operate outside the forum of the inquiry itself, and I argue, in this chapter, that part of the legitimating function of the inquiry, operates to construct a particular mode of objection from the Action group, before the inquiry takes place.

General Background

In February 1976, when Shell-Expro (1) first published plans for an N.G.L. (2) processing plant at Peterhead, there was no government policy for the siting of such plants, though, according to Frank Fraser writing in the "Scotsman", this was a "key question" occupying the minds of the officials in the Scottish Office, as well as the Departments of Energy and Industry in London. Apart from the unpopularity of such plants, there were several other problems, e.g. the need for a deep-water harbour, the provision of infrastructure (housing, roads, water supply, power, emergency services etc), suitability for downstream development (3) and, not least, the unpredictable demands of the oil companies, which might have prevented the Government from issuing a policy statement on the siting of petro-chemical complexes. Thus the inquiry is set against a background of political uncertainty; should the Government set aside an area in Scotland for all future petro-chemical development? And if not, how much control could and should the Government exercise over the siting policies of these powerful multinational companies. Though there is no policy on possible sites for oil related development, there is a general Government policy, accepted as a fact by the Reporter in the inquiry, that every encouragement should be given to the most efficient use of the oil resources from the North Sea.

- (1) Shell U.K. Ltd., Esso Petroleum Company Ltd. and Esso Chemical Ltd are subsidiaries of the multi-national Exxon International. The first two companies to explore for and recover oil in the North Sea jointly as Shell Expro.
- (2) N.G.L. stands for Natural Gas Liquids - see below P.85
- (3) "Downstream development" refers to industries which use certain separated components of crude oil to manufacture other chemical compounds such as various types of plastics.

Peterhead

In February 1976, Shell-Expro first applied for permission to construct their N.G.L. plant near Peterhead, intending to ship the product out from Peterhead harbour. Both Grampian Regional Council and Banff and Buchan District Council (the latter with strict planning conditions) approved the application, though there were objections lodged particularly by local food processing and drink industries who feared the pollution of their product. The R.N.L.I. and local fishermen also objected to the oil company's proposed development of the harbour. A public inquiry was held in May 1976 and was adjourned after three weeks, at Shell's request to enable the impact of proposed harbour works upon other harbour users to be fully assessed by model testing at the University of Delft. In November 1976 Shell abandoned their Peterhead project as they considered that the additional cost and time involved in harbour protection works were unacceptable and that completion by the winter of 1980/81 was uncertain.

Shell had a contract to supply gas to the British Gas Corporation at St. Fergus which could not be supplied until the N.G.L. plant was in operation. Until this time the gas was pumped back into the reservoir in the Brent field which might in time reduce the amount of recoverable oil in the field. Shell also had a contract to export £300 million worth of propane and butane to an American company by 1980.

Shell Expro were thus looking for an alternative site for the N.G.L. plant. It is also relevant to note that Peterhead might have

been considered an unsuitable (4) location for an ethane cracker and downstream petro-chemical development, an important factor in the selection of an alternative site.

Shell Expro were rebuked by the Reporter for failing to reveal full details of plans to construct adaptations to the harbour. This gave the objectors no details on which to base their objections. In April 1977, following the recommendations of the Reporter, the Secretary of State ordered Shell to meet a bill for the objectors of over £16,000 because of their unreasonable behaviour. Counsel for Shell claimed that the company had approached the inquiry in good faith and with confidence in the adequacy of their plans.

The Proposed Development - Moss Moran - Braefoot Bay

This development was designed to process the product from the Brent field which had an estimated N.G.L. capacity of 3 million, million cubic feet of recoverable associated gas and 1,500 million barrels of recoverable crude oil. Depending on production rate, these reserves give the field a life of some 15-20 years.

Crude oil and associated gases from an undersea field flowed into the Brent field drilling platforms where there was an initial separation process. Oil was piped to Sullom Voe in Shetland where it was stored for collection by tanker. The remaining mixture of gases and natural gas liquids (N.G.L) was piped to St. Fergus in the North

- (4) This is because of lack of infrastructure. Companies would not be attracted by the lack of good road access, lack of housing and recreational amenities, the high cost of transport from such a remote area to the major industrial centres, and so forth.

East of Scotland. Here, methane, the lightest component, was separated and sold to the British Gas Corporation as supply for the national grid.

Shell Expro planned a further 135 mile land pipeline to transport the remaining N.G.L., at ambient temperature but under pressure, to Moss Moran in Fife where it would be fractionated into the individual products of ethane, gasolene, propane and butane. Ethane, the lightest component, is the best feedstock for the manufacture of ethylene and the subsequent downstream petro-chemical developments. It would go to Esso Chemical for conversion to ethylene in the proposed steam cracker. Until the downstream development arrived, the ethylene from the cracker would be transported as a vapour to Moss Moran where it would be stored in refrigerated tanks prior to shipping out.

Gasolene is very similar to motor gasoline, i.e. petrol. It would be stored at Moss Moran and piped at ambient temperature to Braefoot Bay for shipping. Butane and propane are clean burning premium fuels, which are known by the generic form L.P.G. (liqueified petroleum gas). They would be stored at Moss Moran in refrigerated tanks and piped in insulated pipelines for shipping from Braefoot Bay to export markets in the U.S.A., a £300 million contract.

The Proposed Site

The Moss Moran site is roughly rectangular and covers some 265 hectares of a wide flat valley of unwooded agricultural land. It is

zoned for agricultural use but has been identified in a Fife Regional Council general planning report, as suitable for industry. The site is naturally screened by the contours of the land. This should result in only columns and stacks over 50m high being visible to neighbouring communities.

At the North-West corner of the site there is Gray Park, a local authority housing estate, which consists of 64 recently modernised houses, lock-up garages and a small recreation park.

The pipelines will run for 5 km from Moss Moran to Braefoot Bay. The latter is a small sheltered cove which lies in between the communities of Aberdour and Dalgety Bay. It is the development at Braefoot Bay on which controversy settled during the inquiry. There were few objections to the main development at Moss Moran.

The Braefoot Bay site would contain storage tanks for ethylene, a refrigeration plant, N.G.L. loading facilities, and two jetties in a Y formation stretching out into the Forth 280m and 240m respectively, from the high-water mark. Immediately opposite Braefoot Bay at a distance of 1km, lies the island of Inchcolm with its uninhabited abbey and bird sanctuary. It is possible to walk along the shore from Aberdour, through Braefoot Bay to Dalgety Bay, and there is no doubt that the area is of both high landscape value and high amenity value. The visitor to Braefoot Bay feels very secluded due to the rocky headland and wooded slopes behind the sandy beach. The area forms a natural playground for local children, though there was no evidence presented at the inquiry on the frequency of use. I visited the bay about half a dozen times

and talked to about a hundred local residents and from this limited information, I would say that the Bay is not used a great deal, but that its peace and quiet are its major attraction. About 1km behind the Bay, there runs a path between Aberdour and Dalgety Bay. This is a very popular local walk, though it does not give direct access to or a direct view of Braefoot Bay itself. There seems little doubt that the proposed development of the bay along with the frequent movement of large tankers would completely change the character of the area.

Background to the Inquiry

The news that Shell-Expro were planning a development at Moss Moran/ Braefoot Bay began to appear in the press in early September 1976, about three months after the adjournment of the Peterhead inquiry, but two months before Shell Expro's official decision to switch the development to Fife. During this time, the company had discussions with representatives of Fife Regional Council and the Forth Ports Authority.

Local opposition groups were formed in the two communities adjacent to Braefoot Bay. In October 1976 the Dalgety Bay Residents Association circulated broadsheets claiming that the terminal would present an explosion risk comparable to Flixborough (5) and objected to the development on the grounds of safety, destruction of the environment, and threat to wildlife. After a meeting in Aberdour which was "the biggest turn-out of villagers in living memory", the
(5)

(5) The "Scotman" reported an audience of 350.

Aberdour Ratepayers' Association were instructed to protest in the strongest terms possible to the Secretary of State and Fife Regional Council.

Towards the end of November, the residents of Dalgety Bay set up an action group to contact experts who could establish the possible effects of the development on the town, before framing their formal objections.

Local Government leaders and elected representatives in the area all declared themselves to a greater or lesser extent in favour of the development, and the Aberdour Ratepayers' Association was accused of scaremongering by their Regional Councillor, an accusation which they rejected.

During late November and December there were letters and articles in "the Scotsman" dealing with the subject of alternative harbour sites, the broader implications of the development, and the possibility of a public inquiry. Local objectors whom I interviewed gave contradictory opinions. Some thought they had a strong case which had a good chance of convincing the inquiry Reporter, some thought the development was inevitable and that they ought to seek concessions from the oil companies, while others thought the inquiry process was a sham and that more disruptive opposition ought to be attempted.

This latter argument came from a small number of local objectors who were familiar with the Edinburgh Airport Inquiry which had involved objections from a similar community on the other side

of the Forth. The objectors had raised a considerable
(6)
amount of money and presented a sophisticated technical argument
which convinced the inquiry Reporter. However, the Reporter's
recommendations were rejected by the Secretary of State. There was
also reference to the Nigg Bay inquiry where a similar
(7)
outcome occurred.

A petition was handed to the Secretary of State by the
(8)
Aberdour Ratepayers' Association objecting to the development on the
grounds of impact on the total environment, contradiction of
official policy, hazard to health, pollution, restriction of freedom
of navigation and restriction of public access to the Braefoot
foreshore. Shortly afterwards, Shell-Expro held a public meeting in
Aberdour to explain their plans to the local community and were
faced with pointed questions backed up with detailed information and
knowledge, from some of the local objectors.

At the end of January 1977 the Dalgety Bay Residents
Association and the Aberdour Ratepayers' Association formed the
Aberdour/Dalgety Bay Action Group, to prepare objections for a
public local inquiry. There was a public meeting organised by Shell-
Expro in Dalgety Bay which, according to a report in the "Scotsman",
ended in uproar.

(6) see Mutch 1974.

(7) see Taylor 1975.

(8) This was signed by 1183 people.

The application was "called in" (9) by the Secretary of State in February 1977 and there followed applications by Esso Chemical for an ethane cracker and a site for unspecified downstream development at the same time. In May, the Secretary of State nominated a Reporter to conduct a public inquiry beginning on June 13th. After protest from the objectors this was later extended to June 27th.

The Communities and the Joint Action Group

Aberdour might be described as a "picturesque" little village of around 1500 inhabitants. There are many fine old buildings and the housing stock is varied: from large private properties to small cottages and a small council estate. It is predominately a commuter village serving Edinburgh and Fife, though a relatively high proportion of the population are retired. There is a sandy beach adjacent to the village which attracts coach loads of visitors in the summer. There is also a ruined castle. The Regional Council want to promote Aberdour as a tourist resort, with its golf course, tennis club and beach, and there are plans to designate the village as a conservation area, though new private building has already been discouraged.

Dalgety Bay is a different community. It was planned as a private "new town" in the late 50's to meet a demand for private

- (9) The "Calling in" of a planning application normally occurs when the proposed development is seen as being of national importance. The procedure means that the Secretary of State makes the final decision based on the Report from the inquiry and thus removes the decision from the local authorities.

housing which was forecast due to the opening of the Forth Road Bridge. The town is half-complete and a target population of 7000 looks like being an underestimate. The Regional Council want to encourage the rapid development of the rest of the town which now has Scottish Special Housing Association and District Council houses aswell as a predominance of private houses.

The houses are built on a gentle slope which rises from the broad curve of a pebbly beach. The town has been described both as an eyesore and delightful. It certainly is not as conventionally attractive as Aberdour. The town has been designed to attract mostly young professional families and there is a fast turnover rate for population. The yacht club is very popular and there are a large number of boats moored around the bay.

In April 1977, I went to the Dalgety Bay Yacht Club to meet the leaders of the Action Group, and to see the exhibition they had organised to enlist support and raise funds. The exhibition was about the dangers of the petro- chemical industry and displayed criticisms of the plans put forward by Shell Expro. There were magazine and newspaper clippings, books, journal articles, photographs and artist's impressions, and a large model of the proposed Braefoot Bay devopment made by local school children with information given and questions answered by leaders of the Action Group. During the evening, I estimated that over 200 people passed through the exhibition which was later displayed in Aberdour and Edinburgh.

The Action Group itself had a fluctuating leadership, sharing

the varied functions of the group. Amongst the leaders were a solicitor with personal experience of the Cramond/Edinburgh Airport inquiry, a medical technician with some political experience (10) and some specialised knowledge about petro-chemicals and the oil industry, a naval architect, a chemical engineer, a retired naval officer, a housewife, a banker, two teachers, the managing director of a local clothing firm and a systems analyst. Their ages ranged from late 20's to over 60 but most were in their early 40's. In general they were an articulate and intelligent group of middle-class people.

A general impression of their reaction to the development and their plans for a public inquiry came out of my conversations with them. Their reasons for objecting were fear for their safety, interference with recreations such as golf and sailing, destruction of the environment, danger to children and falling house prices. They felt that with money and time, they could put up a good technical argument which would convince the Reporter but that this was unlikely because they did not have much money and time was short. Some felt that the decision had already been taken, "a carve-up between National and local government and the oil companies", others thought that they ought to disrupt the inquiry and instigate other unspecified "disturbances", but the consensus feeling seemed to be that their best chance lay in putting forward a good case (11)

(10) Though this gentleman had taken part in that public inquiry, his normal work did not involve court appearances and he was not particularly experienced in the techniques of advocacy.

(11) See Chapter 7.

at the inquiry. Thus they concentrated their efforts on door to door fund raising and campaigning and studied the Shell/Expro applications closely. If they raised enough money they hoped to employ a scientific expert and perhaps an advocate to present their case at the inquiry, though the scientist had priority, suggesting that the objectors thought they could present their own case adequately but would have little chance without expert technical evidence of their own.

I conducted a number of unstructured interviews in the two communities asking local people questions about the development, the Action Group and the inquiry. What follows is an impression of local feeling based on conversations with around 100 people encountered randomly.

It was immediately evident that most people seemed to know little about the development, a little more about the Action Group and nothing at all about public inquiries. The exceptions were those few who were actively involved or who knew someone who was actively involved.

By and large reaction was against the development because it was dangerous and would spoil the area, though few were able to say why or how. A few thought it would bring jobs and would not be too dangerous and therefore was good. The Action Group was composed of a local clique, according to the people I spoke to, but most thought they were doing a good job. Hardly anyone knew anything about the public inquiry. When I described it to them and asked them if they would go along to voice their objections, most said they would leave

it to the Action Group to which many claimed to have made financial donations.

This impression would support John Roger's theory (Roger 1978) that in this sort of situation, a small group take control of an Action Group and operate autonomously with little contact with or feedback from the community they are representing. In this case the Action Group decided to fight their case in the inquiry on technical and scientific grounds and their active membership consisted predominantly of technical and professional people prepared to put across technical arguments. If we accept that the public
(12)
inquiry system encourages the formation of Action groups who attempt to pursue technical cases, this would support the argument that, at a very basic level, lay participation is constructed and channelled by the prospective operation of legal processes as perceived by the active representatives of the community. In other words the very nature of the public inquiry system constructs lay participation in certain ways despite the declared intention of the legislature
(13)
to extend and encourage lay participation. John Roger (Roger 1978) argues that this is an example of depoliticisation in a technical/rational society, which encourages the growth of private space at the expense of the reduction of public space. i.e. individuals do not perceive the organisation of their lives by others as something they should be concerned about and participate in.

(12) Their cross-examination in practice very often moved away from the purely technical. See Chapter 7.

(13) SDD Circular 14 1975.

If, as I argue in Chapter 1, the inquiry is seen as part of a process of legitimization, the formation of an Action Group demonstrates how this works on at least two levels. Firstly it is clear that most local people would have accepted the development without any objections or any public inquiry. For them, the operations of the state are awarded legitimization at a more general level. This is what depoliticisation means, the feeling that it is not their job to be actively involved.

The public inquiry system then acts to locate the vociferous opposition and construct it in a particular manner. The Action Group members have not been depoliticised at this stage, they are politically active. In an important sense, their participation in the public inquiry is political activity directed at having an influence on the decision making process. For Roger the inquiry is depoliticised because it transforms political questions into technical questions. Roger however doesn't deal with the political activity of the action group. I aim to show how their views are presented and managed in the inquiry. If the inquiry comes to a technical decision it has to do so by somehow defusing the anger and discontent of the active objectors during the process of the inquiry itself. I have described the contradictory views and strategies held within the Action Group. They felt the inquiry was a sham, that the decision had already been taken and that they had inadequate resources to participate effectively. Nevertheless they were also highly motivated and enthusiastic. The Group took the trouble to do their own research both on public inquiries and into the specific technical concerns of the inquiry. They entered the inquiry well-informed, determined to do their best and angry at the way they had been treated by the oil

companies and civil servants. At the end of the inquiry most of these contradictions remained. Their experience of participation had somehow both confirmed their scepticism and sustained their commitment to participation. I want to argue that because the objectors actively and enthusiastically participated in the inquiry, they can be said to have seen the inquiry as a legitimate exercise of power. In this study I want to describe how these contradictions were maintained throughout the process of the inquiry and thus how legitimization was secured in the social practices of the inquiry.

These lay participants were not planning advocates nor experienced inquiry participants, nor experienced members of active pressure groups, some of them were confident public speakers, others more nervous but they were not naive or inarticulate. I would argue that in comparison with a randomly selected group from the wider community, this group was unusually well equipped to participate in a public inquiry. If these people found participation difficult, how would the uninformed, the ignorant, the ill-prepared, and the inarticulate fare?

The Public Local Inquiry

The inquiry was postponed for two weeks from the original date, June 13th, to give the objectors more time to prepare their case. Contrary to their expectations, the objectors had raised sufficient money to employ an advocate as well as a scientific advisor. The objectors were unwilling to specify the source of their new found resources or to reveal the identity of their expert witness until he was due to appear.

Pre-Inquiry Procedure Meeting

This precursor to the inquiry proper was, until recently (14) a Scottish experiment. According to the Reporter, the meeting had three functions, to help parties focus on what were likely to be the main issues, to exchange productions of evidence and to arrange a provisional timetable to avoid the lengthy retention of experts and to allow objectors to plan their participation.

The Reporter opened the meeting by describing what the procedure at the inquiry would be, establishing those parties who would be appearing, negotiating a timetable and making general observations. The meeting passed fairly smoothly with the objectors requesting further adjournments, the instigation of a Planning Inquiry Commission and the earlier availability of precognitions.

Appearances

Applicants

For Shell Expro

The Dean of Faculty of Advocates, an advocate, a firm of solicitors

For Esso Chemical

A Q.C., an advocate, a firm of solicitors

Local Authorities

For Fife Region and Dunfermline District Councils

A Q.C., and an advocate

For Kirkcaldy District Council

A Q.C.

(14) S.I. 1976 no 721 recommended the introduction of a pre-inquiry procedure meeting in English Highway Inquiries.

For the Forth Ports Authority

The Secretary

Objectors

For the Dalgety Bay and Aberdour Joint Action Group and Aberdour Golf Club

An advocate and several members of the Joint Action Group

For the Conservation Society

The Secretary and Chairman of the local branch

For the Forth Yacht Clubs Association and Aberdour Regatta Committee

Two members

For Mrs. F. Witaker St. Colme House

A Q.C. and a firm of solicitors

For Donibristle Investments

The Secretary

For Gray Park Residents

A solicitor

Evidence

Shell Expro called 6 witnesses, Esso Chemical 5 witnesses there were an additional 5 witnesses common to both companies. Messrs Cremer and Warner, an independent consultancy, appeared as authors of a report commissioned by the local authorities. The Health and

Safety Executive provided 2 witnesses, the Forth Ports Authority one witness, the local authorities seven, the Joint Action Group five, the Conservation Society three, the Forth Yacht Clubs two, the Gray Park residents two. In addition there were statements of evidence made by twenty other individual objectors. Though it might appear from this that the objectors played a large part in the inquiry, their evidence took up very little time in comparison with the applicant companies. They did, however, take up a good deal of time in cross-examination.

The inquiry

The Inquiry was held in the courtroom in the offices of Dunfermline District Council in Dunfermline. The room had a high ceiling and large windows running along each side wall. The judges' bench where the Reporter, his Assessor and his clerk sat, and whence witnesses gave their evidence was raised a few feet above the floor level and was constructed in a light wood in a modern design.

On the first day the room was packed as it was on the last day. Apart from those two days there were always plenty empty seats on the public benches though the rest of the room was well filled and quite cramped. The room became very warm and stuffy especially in the afternoon and quite frequently some participants seemed to have difficulty staying awake.

On a normal day the proceedings would begin at 9.30 and end at 4.30 with a 10 minute coffee break in the morning and one hour for lunch. On Fridays the inquiry ended at 1.00 p.m.

The first day began with the evidence and cross-examination of the Shell policy witness, a very senior executive. There was almost an exciting atmosphere, with much comment and movement from the public benches which made it difficult to hear the witness. Most of the objectors showed their nervousness in their cross-examination. In the afternoon, the public benches were almost empty and the inquiry settled into what was to become its regular almost soporific procedure with the evidence of Shell's second witness.

Though the first morning session was untypical of the inquiry as a whole, it presented a stereotypical picture of what a public inquiry ought to be like from the point of view of "an angry local objector". The witness for the developers, a very senior executive, a decision-maker rather than a representative, was there to justify his decisions in the face of cross-examination from local objectors. The language and the issues were not technical; this was the moral centre of the inquiry. For the majority of those in the public benches, these were the questions and answers with which the inquiry ought to be concerned. This was democracy in action, the "little man" putting the multinational company on the spot. "Why did the development have to be built here? What about the safety of their children? Had the whole deal not been "carved-up" already behind the scenes with central and local government?"

In the afternoon session, most of the public had disappeared, a technical witness was on the stand and the cross-examination was being performed by an advocate. The normal procedures of the inquiry had taken over.

How can we account for the "theatricality" of the first session. There were good reasons for Shell beginning their case with a general statement of policy covering all aspects of the development from a senior executive, before the very detailed examination of the design of the plant. It paints a picture of the whole development for the Reporter and the media and for the public in general, and performs a public relations task, explaining how the interests of Shell coincide with those of the general public in ensuring efficient exploitation of the resources from the North Sea.

The Action Group organised a good turnout of local objectors for the first session to attract media attention and demonstrate the strength of their support.

Thus the first session of the inquiry was treated by both "sides" as an opportunity for a public display of strength, organised largely with the media in mind. Ironically, as I will show later, the evidence and cross-examination at this session was largely irrelevant in terms of the Reporter's final Report. In Chapter 7 I will examine the extent to which the Action Group were aware of the gap between the symbolic importance of this first session and its relative insignificance for the practical outcome of the inquiry.

Shell concluded their evidence on the fifth day and Esso Chemical began their evidence. With a few exceptions most of the witnesses' precognitions had been circulated in advance, so the

normal procedure was for the advocate to note any late changes in the precognition and sometimes to run through the main points, before the Reporter invited cross-examination. He always did this in the same order which resulted in an "in-joke"; the Reporter asked the Esso Q.C. if he wished to cross-examine a "friendly" witness and the Esso Q.C. paused, rose, intoned "No questions, Sir" in a serious voice, and sat down. There was general amusement at this repartee. Normally a witness faced "friendly" cross-examination if any, first,
(15)
then hostile cross-examination. Unless time was consideration, an advocate took precedence over a lay participant in cross-examination but it was generally left up to the Action Group to decide their own order of cross-examination.

Esso Chemical finished their evidence on the tenth day of the inquiry, though half a day had been taken up during this time, by the Forth Ports Authority. Cremer and Warner took just over a day, the Health and Safety Executive just under a day, the Local Authorities two days interrupted for half a day by the Action Groups' expert witness, the Conservation Society and the Action Group shared a day and a half, individual objectors took up half a day and the closing speeches took up the remaining day and a half. The transcript of the inquiry runs to some 3,500 foolscap pages of typescript, the final Report some 400 pages. In all, the Inquiry lasted 18 days (including 3 half days) and this was considerably less than the Reporter's original estimation based on his experience at Peterhead where Shell were still giving evidence in the third

(15) A further example of informality as analysed in the next chapter.

week of the inquiry. (16)

The Issues

As future chapters tend to concentrate on particular issues, this section is intended to give a brief idea of the content of the inquiry.

The applicant companies spent about half the inquiry describing, in great detail, the plans for the development. They also put forward arguments that the development was in the national economic interest and countered possible objections by claiming that there was evidence to show that the plant would present an acceptable level of risk, an insignificant threat to the environment and no problems of noise and pollution. Their planning witness also claimed Braefoot Bay was the only possible site for the development in Scotland.

The three "independent expert bodies", Cremer and Warner, the Health and Safety Executive and the Forth Ports Authority, made some technical criticisms of the applicants' plans, some of which were later drafted into planning conditions put forward by the Local Authorities. The latter appeared to defend their reasons for approving the application. The objectors, apart from cross-examining the undermentioned witnesses at some length, also put forward evidence and arguments on their own account. In general

(16) In other words, this inquiry was very much quicker due largely to the efficient organisation of the advance circulation of precognitions of evidence. This meant that evidence did not have to be led in the inquiry. This could be interpreted as an aid to lay participation.

they claimed that the development posed an unacceptable level of risk to the community that it would destroy the local environment and remove its amenity value, and that it was the wrong sort of economic stimulus for the area. The Objectors from the Forth Yacht Clubs were concerned to negotiate assurances that the annual Aberdour Regatta would be allowed to proceed without interference. the most contentious single topic was safety and I will look no more closely at the controversy in Chapter 6.

The Objectors

I have described the growth of the Joint-Action Group as they prepared for the public inquiry. I now want to enumerate the objectors who appeared at the inquiry.

Objections were maintained at the inquiry by several groups and individuals. The owner of St. Colme House was represented at the inquiry by a Q.C. who attempted to negotiate compensation from the applicants for his client as her house was the nearest dwelling to the development at Braefoot Bay. The Company secretary appeared for the company largely responsible for building Dalgety Bay, Donibristle Investments. Two lay members represented the Conservation Society, and two lay members represented the Forth Yacht Clubs. A solicitor represented the Gray Park residents. They took no part in the cross-examination during the inquiry, only appearing very briefly at the end of the inquiry to give their evidence.

The main objectors were the Dalgety Bay/Aberdour Joint Action

Group, who were represented by an advocate and a fluctuating number of their members. Since the Q.C. for St. Colme House rarely appeared at the inquiry, the Action- Group advocate shouldered the bulk of the cross-examination, and generally was the first "objector" called to cross-examine a witness. The lay objectors from the Joint Action Group, the Forth Yacht Clubs and Donibristle Investments usually cross-examined each witness and for the purposes of this thesis are classed together as "the lay objectors".

There did not seem to be a rigid division of labour between counsel's cross-examination and that of the lay objectors, though in general, the lay objectors spent more time in the cross-examination of policy witnesses or safety witnesses while the advocate was entrusted with most of the detailed scientific and technical cross-examination. They usually supplemented each other's cross-examination, though this often led to repetition. This problem also occurred through the fluctuating attendance of some objectors e.g. one member might attend every other day, another only for half an hour every day, and another for three consecutive days only. This made it difficult for the objectors to keep up with the evidence. The objectors Q.C was generally only present at the inquiry when he was performing cross- examination, he was not in full-time attendance at the inquiry.

A typical day

At about 9.20 a.m. the room would begin to fill up with participants taking their seats, exchanging precognitions, sorting out documents, reading newspapers and chatting to acquaintances.

There was some social contact amongst the various interests at this time, particularly amongst the advocates.

The Reporter would start the day's proceedings at 9.30, usually with some business or procedural matters concerning timetabling or the availability of witnesses. Then evidence or cross-examination would continue where it had left off until around 11.00, when a ten minute coffee-break, (this usually took at least 15 minutes) was taken. At this time the whole of the inquiry including the Reporter, the press and members of the public mingled.

Evidence continued until sometime between 12.30 and 1.00 p.m. when lunch was taken. The Shell/Esso entourage adjourned to the adjacent hotel, others to nearby pubs and restaurants. Quite a number of participants favoured a walk in the nearby park, on occasions it seemed as if half the inquiry were walking around.

The long afternoon session began around 2.00 p.m. and continued without a break until 4.30 p.m. or occasionally later if e.g. cross-examination of a witness was almost completed. Often the same witness would be on the stand for most of the day, sometimes one representative's cross-examination would go on for three hours or more. It was only towards the end of the inquiry when the objectors were giving evidence and there was little cross-examination from the applicants or the local councils that the pace of the inquiry seemed to speed up.

Impresssions

The analysis of the inquiry which follows in the next 4 chapters gives little idea of the atmosphere of the inquiry, of what it was like to be there. I now want to set out some of the features of the inquiry which I found most striking, in my daily observations. This information will be important in the more general discussions of lay participation below.

Perhaps the most startling "seen but unnoticed" feature of the inquiry was the atmosphere of almost friendly co-operation and conciliation which dominated the inquiry. I found this remarkable in view of the anger, deterr- mination and emotion shown by the objectors before the inquiry. During the inquiry there were only rare outbursts of anger or passionate questioning from the objectors. I had expected more. Quite apart from the detached professionalism of the advocates and experts, the lay objectors gave a surprising display of calm co-operation and cool objectivity. Their only concession to their feelings seemed to be the occasional resort to irony, a popular rhetorical device frequently used by the advocates.

The inquiry at times took on the atmosphere of a committee of arbitration: each side negotiating concessions from the other, dealing in the minutiae of applications, moving towards a consensus solution. This was particularly noticeable in the behaviour of the Yacht Club objectors. Though these people were also part of the

(17) Garfinkel 1967.

Action-Group and associated themselves, sometimes actively, with the Group's participation, they concentrated on negotiating with the applicant companies, to retain the right to hold their annual regatta. They behaved as if the development had already been permitted and were only concerned that their interests were not ignored by the companies.

This amicable "business-like" atmosphere contrasts with the basic adversary system underpinning the organisation and procedures of the inquiry. Following the traditions of the adversary procedure, witnesses appeared according to their allegiance, were cross-examined and were then, almost certainly, finished with the inquiry. Though logically the inquiry is about the collection of information on various
(18)
topics, it is organised along the lines of the adversary system, that is, according to "sides" rather than issues. In this system you either support the development or you are against the development. Thus a formal system originally adopted to settle a dispute between parties usually involving a point of law has been carried over into a fact-finding commission hearing evidence from a number of parties who do not fall neatly into two camps. One of the most important results of this is that the "issue-centred" nature of the inquiry is obscured. I argue later that the dominant group (Reporter, lawyers, experts) approach the inquiry in this way but this approach is not made explicitly available to the objectors, nor does it become apparent
(19)
during the course of the inquiry.

(18) I argue in Chapters 4,5 and 6 that the Reporter sees the inquiry in this way and operates accordingly. I also argued in Chapter 2 that this is the bureaucratic "function" of the inquiry.

(19) Both the OCPU and PERG proposals discussed in Chapter 1 suggest that inquiries ought to be organised by issues rather than parties.

The lay participant experiences the inquiry as a succession of witnesses. How does he decide what the "issues" of the inquiry are? How does he recognise that certain witnesses give evidence on the same issue? In addition, the layman has to be able to understand complex technical evidence if he intends to participate effectively. (see Chapter 7) I would argue that these difficulties partially account for the boredom expressed by many of the lay objectors during the inquiry. I would maintain that for much of the time the objectors were bored because they did not fully understand what was happening at the inquiry. The advance circulation of written precognitions of evidence meant that cross-examination was difficult to follow and understand if you hadn't read the precognition, and there were rarely enough to go round, despite the efforts of the Reporter. The advocates' cross-examination was often so precise and concise that it was difficult to know what points he was trying to make and whether or not he was successful. Evidence was technical and each witness spoke to his own expertise and would not comment on matters outside that e.g. questions such as "Do you think this plant ought to be constructed close to people's homes?" "What would you think if you lived in Aberdour?" which were fairly frequently asked by objectors. As I will argue later (see Chapter7), it seems to me that the dominant group and the objectors have very different methods of participating in the inquiry and very different notions of the aims and functions of an inquiry. The dominant group have the power to enforce their definitions as official without ever articulating or making publicly available, these definitions. As a result effective lay participation becomes extremely difficult.

After the Inquiry

The Reporter produced a Report in two parts. Part I which was circulated around the participants for their comments, consisted of a summary of evidence and the Reporter's findings of "fact", and Part II, the Reporter's conclusions and recommendations. This Report was lodged with the Secretary of State for Scotland awaiting his decision.

Since then, the objectors attempted to have the inquiry reopened because of new evidence they claimed to have found. This evidence was submitted to the Secretary of State who made investigations and decided that the evidence did not help him in coming to a decision. However there was long delay, as yet unexplained by the Scottish Office, before a decision was finally taken by the Conservative Secretary of State in November 1979, that the development should go ahead. This decision was made over 2 years after the end of the inquiry. The Action Group appealed against this decision to the Court of Session on the grounds that the Secretary of State had exceeded his powers and had acted unconstitutionally. The Court rejected the appeal in February 1980, awarding costs against the Action Group, who announced their intention to take their case to the European Court of Justice.

The bulk of this chapter has consisted of descriptions of the participants, the issues and the general conduct of the Moss Moran inquiry. I argued that the very fact of holding a public inquiry draws together a group of activists who will "represent" the rest of the community in an Action Group which will participate in the inquiry.

The vast majority of local people accept the proposed development and/or the public inquiry (if they know about either) as legitimate at least in as much as they do not either become politically involved themselves or give active support to the Action Group. I am not concerned in this study with legitimation as it affects this community.

I concentrate here on the participation in the public inquiry of the lay objectors (most of whom were members of the Action Group). These people were activists, and though sceptical of the inquiry process, they had expectations for their participation. I describe and explain how they were able to maintain their contradictions throughout the inquiry: how they managed to participate vigorously and with purpose when all the time they had grave doubts that there was any point to their participation.

In the following four chapters I present an analysis of the conduct of the inquiry which demonstrates some of the ways in which legitimation operates through social practices.

CHAPTER 4

The Reporter 1 - the control of procedures

A quotation from the transcript of the final day of the inquiry.

Reporter - "We seem to be kind to each other today in this end of term feeling and it is my turn to say thank-you. At the procedure meeting an estimate of evidence indicated an inquiry running to 5 or 6 weeks and it is due to the efforts of all parties, the Applicants, the Local Authorities, and the objectors that we have completed these proceedings in 4 weeks.

And I look upon it as an important aspect of my job to help all parties to present their case as effectively and as economically as possible both in time as well as in money.

And the presentation of so much written evidence in advance has not only reduced the length of the hearing but it has also enabled all parties to be better informed before they come along to hear evidence, so that cross-examination has therefore been shorter and more to the point than might otherwise have been the case. Without this cooperation I would really have had a much more difficult inquiry on my hands....On the whole it has been I would not say a pleasant inquiry but it has been a business like inquiry."

Objector: "Mr. Bell, as co-chairman of the Action Group I should like to add my appreciation of the very fair, patient and sympathetic way in which you have conducted this inquiry. It must have come as some relief to you that we have not found it necessary to revert to such tactics as chaining ourselves to items of furniture or to drown the proceedings in shouts of "Ban the Braefoot Bomb."

In the "descriptive" account of the inquiry in the last chapter, I tried to give a general impression of the main issues of the inquiry and an idea of what happened at the inquiry and what it was like to be there. I now want to look at the day to day procedures of the inquiry in more detail. In this chapter I look at the way in which the Reporter defines procedural "informality". i.e. how he exercises his responsibility of encouraging lay participation. This is his responsibility to "democracy" as I argued in Chapter 2. The following two chapters will deal with his "bureaucratic" responsibility the collection of relevant facts in

order to construct his final Report and in particular the findings of fact.

Of course these twin responsibilities are only analytically separable, in practice they affect each other all the time. For example a Reporter who concerns himself too much with the efficient collection of information risks dissatisfaction amongst the objectors who need to feel that their participation is worthwhile. In this chapter and the following two, I describe the balance between these two functions that the Reporter constructed in the Moss Moran inquiry.

As stated in the introduction; I share with the ethnomethodologists, an interest in the methods and procedures employed by actors to construct social reality. I see the inquiry as a process consisting of the work of the participants. Thus its existence is not something mundane, to be taken for granted, but rather a serious problem worthy of examination. How is the inquiry organised? How do participants produce particular statements and questions? How do they know when to speak? The basic question is really "How is society possible?" i.e. how can we account for repetition, pattern and predictability in social life?

Social actions actually construct social reality but they do so within the process of structuration, (Giddens 1976) that is to say that they produce and reproduce social structures. My project is to examine how certain structures are reproduced in the action of the inquiry. This enables us to see how power is transmitted e.g. how, in practice, one mode of participation is privileged over another,

and how the exercise of power is legitimated, again in the day to day procedures of the inquiry.

I start by examining the central role of the Reporter in the inquiry. I argue that he has very wide discretion to direct procedure during the inquiry and to select and order information for the final Report. This chapter deals with his control and direction of the procedures during the inquiry.

I have suggested that legislation on inquiry procedure has concentrated on procedures before and after the inquiry, leaving what happens during the inquiry to the discretion of the Reporter. SDD circular 14/1975 contains the most recent set of instructions to the Reporter on the conduct of public local inquiries. Does this document give any directive to the Reporter as to how the daily procedure of the inquiry ought to be organised? The contents of the circular are not detailed procedural rules, but suggestions as to how the inquiry ought to be conducted. e.g.

The Circular states that in general.

"It is important that the inquiry serves efficiently as a means of open investigation of the issues to be considered in arriving at a proper balance between the various competing interests."

This doesn't really give much more indication of how the procedure ought to be conducted. What do "efficiently", "open" and "proper balance" mean? Who decides which "issues" are to be considered?

If the Reporter was guided by this statement and he made it clear early in the inquiry that he intended to follow the suggestions of Circular 14, then we can only establish its precise meaning in this context by looking at his final report and his conduct of the inquiry. The Reporter was satisfied with the inquiry at the end (see Chapter 5); I take this to mean that he must have felt reasonably satisfied that the inquiry had been "open, balanced and efficient" and that it had considered the 'correct' issues.

The Circular also directs the Reporter's attention to several particular issues.

- (1) The inquiry should ensure the fullest possible explanation of the applicants' proposals.
- (2) As far as possible, documents and precognitions of evidence were to be circulated amongst the parties in advance.
- (3) Repetitious cross-examination was to be avoided.
- (4) The Reporter was reminded that his role was both directive and inquisitorial.
- (5) The Reporter was to encourage

"the maximum informality of procedure so that the ordinary interested person does not feel inhibited from making a contribution without professional representation."

- (6) The principal means of testing evidence should be cross-examination.

Finally the Circular stresses the need for informality, avoiding, where possible, formal procedures and terminology, suggesting that the Reporter in regulating procedure, be guided by the principles of "openness, fairness and impartiality".

The Reporter himself, talked about his role on several occasions during the inquiry. He said he always kept in the forefront of his mind the question "What is before the Secretary of State?" i.e. What question does the Secretary of State have to answer. As I argued in Chapter one, the presumption that Government policy counts as a fact narrows this question to "Should these applicants be permitted to build this particular development on this particular site?", but there are still no criteria specified for selecting information on which a decision can be made. This is concerned with the Reporter's fact finding role and will be dealt with in the next Chapter.

The Reporter made two other comments on his function. He claimed it was his duty,

".....to help all the parties to present their case as effectively and as economically as possible both in time as well as money."

A further statement came in response to an interjection from an objector.

Objector: - "Is there any point in having a lot of recommendations if that is all they are, recommendations? Unless there is some sort of mechanism to make the applicants abide by them?"

Reporter: - "Well the public inquiry is the forum where not only the recommendations of these consultants but the expert evidence of other parties as well is put forward and tested, and it is my job at the end of the day as a seeker after truth to weigh up the respective merits of these recommendations, and if I am minded to recommend approval to the Secretary of State then take account of these recommendations as well. Sometimes, because of lack of detail it is not possible for a Reporter to recommend specific conditions. Instead he will recommend the aim which conditions ought to be framed to meet, if I could put it that way, and that is the fairly normal practice. The fact that some people have rejected or discounted recommendations of these consultants doesn't mean that they will necessarily be ignored."

Circular 14 still leaves the conduct of the inquiry i.e. the day to day procedures to be adopted, to the discretion of the Reporter. Of his two major functions, the circular emphasises the need for him to use his directive role to maintain "the maximum informality of procedure", while the Reporter tends to give precedence to his fact finding role, "a seeker after truth" Chapter 5 will deal with the latter role, the rest of this chapter will focus on the Reporter's control over the procedures.

I want to emphasise here that there are few public rules governing the procedures during the public inquiry. I described in Chapter 2 how "law" could be divided into three concepts, legal rhetoric, legal rules and institutional practices. The Reporter has the discretionary control over the procedural conduct of the inquiry. He is governed by very few legal rules and by rather more rhetorical exhortations. My purpose here is to describe how the rhetoric appears (or not) in the social practices of the inquiry.

The procedure followed at the inquiry was the adversary procedure habitually used in courts of law. The evidence of a witness was led by one side, the witness was cross-examined by the opposition and re-examined by "his" advocate. The applicants and those supporting them put their case first followed by independent assessors and lastly the objectors.

In what sense can the adversary procedure be described as informal? What does "the maximum informality of procedure" mean? According to circular 14, the point of this "informality" is to enable lay objectors to make a contribution without professional representation. In other words an "informal" procedure is intended to allow laymen to participate with the lawyers, not necessarily on equal terms but on more equal terms. The basic formality of the adversary procedure is to be modified to make lay participation easier.

The logical expression of "informality" would seem in idealist terms to be to allow laymen to put their arguments on the inquiry in any way they liked and to ask any questions which they considered relevant. Here we come up with the notion of "proper balance" and with the tensions felt by the Reporter in his conduct of the inquiry. He has to ensure "openness and informality" to encourage and enable lay participation. He is to make the inquiry as efficient and effective as possible in terms of time and money. He has to collect, sift and present evidence in the form of his "findings of fact" on which the Secretary of State can base his decision. These aims are mutually contradictory. e.g. if the inquiry was to be completely informal and objectors were allowed to

say what they liked when they liked, the inquiry would take longer and cost more and he might find his fact finding duties more difficult. Similarly if the inquiry was run very formally, like a court, objectors might not be able to participate and feel aggrieved, thus creating a problem of legitimation.

In his "democratic role" the Reporter reproduces the rhetorical intentions of lay participation i.e. the extension of democracy, the opportunity for ordinary people to take part in decisions which affect their lives. Objectors expect this opportunity to be "meaningful". In some way they must feel that the inquiry is operated justly and fairly and that the Reporter is heeding their arguments. In his bureaucratic role, his function is to test and collect relevant facts in an fast and efficient manner. This is part of the technical rational organisation of society. (Habermas 1971)

Bankowski and Mungham (Bankowski and Mungham 1978) describe this tension as the gap between democracy and efficiency. The demands of "democracy" for lay people to be able to put forward their arguments and have their say in an unrestriced manner, pull in the opposite direction to the bureaucratic and professional demands for the inquiry to be efficient in terms of time, cost and outcome. Bankowski and Mungham describe this as an "unbridgeable gap". It is my intention in this study is to describe the nature of the gap in such as way that the possibilities for political change can be examined. (see chapter 8)

Thus we have to look at the Reporter's words and actions, in the inquiry, to discover how he interpreted "maximum informality of

procedure", and at how he maintained a balance between formal and informal procedures.

Like any text, the language of circular 14 is indexical, that is, the words only have meaning in particular context. Thus "free", "open" and "informal" only have meaning in the practice of what happens during the inquiry. In terms of the discussion in the first two chapters this is an examination of the gaps between the rhetoric of law, the public rules of law and their practical application in the inquiry. (see Chapter 2) "Openness fairness and impartiality" came from the Franks Report, "the maximum informality of procedure" from circular 14, both are rhetorical claims in the sense that they refer to public notions of justice, democratic participation, freedom etc. without specifying the precise procedures by which these principles are going to be practised. The operationalisation of these principles is at the discretion of the Reporter and I have argued that these compete with a variety of other aims which the Reporter has to try to satisfy to maintain his professional standards. The Reporter is a central figure at the inquiry and has control over the procedure thus it is his operational definition of "informality" which has meaning in that it is imposed on the other participants and affects their actions.

I want to look now at how the Reporter controls the procedures of the inquiry. I need to have definitions of "formality" and "informality" with which to work. "Informality" is used in circular 14 and once or twice by the Reporter himself - but neither of these uses tell us what constitutes informality.

For the purposes of the following analysis "formality" will refer to those instances where the Reporter insists on conformity to the adversary procedures of the court and "informality" to those instances where the former are relaxed by the Reporter. I will argue that the Reporter has to mediate amongst the contradictory aims which he is expected to achieve and that "informality" coincides, for him, with helping the lay objectors to participate and allowing them to have their say. "Formality" for the Reporter lies in his needs to collect information, avoid delays and preserve orderly procedures.

One should not assume that the distinction between formal and informal is equivalent to that between legal and non-legal, though this may be the case so far as the practices of the Reporter are concerned. For example there is no logical reason why lay participation might not be aided by formal, non-legal procedures e.g. in some sort of lay seminar, or why informal legal procedures might not aid lay participation. I do not make the assumption that all "formality" inhibits lay participation, nor that "real informal participation" would imply that objectors could say what they liked when they liked. Social life is ordered in complex ways. I have argued that we cannot even make general statements about how formal rules work without examining the way these rules appear to operate in social practice. I do not want to consider the logical possibilities of arrangements of ideal type concepts, the aim of my analysis is to examine how, in practice, the Reporter organises the procedures of the inquiry and to locate the criteria on which he bases his decisions. I can then examine the extent to which his practices influence or inhibit lay participation. Thus I make no

prior judgements about the constitutive effects of formal or informal, legal or non legal procedures but rather I want to look at the relationship between the routine social practices of the participants in the inquiry and the procedural guidelines available (as well as to broader social and ideological structures).

I will now look at several examples from the transcript which demonstrate the nature of the balance drawn by the Reporter between formal and informal procedures.

In example (A) the Reporter acts on the assumption that the taking of oaths is an unnecessary increase of formality. He does not expect this relaxation to affect the truth-value of the evidence presented to him. This is an example where the informality is supposed to aid lay participation by creating a more relaxed atmosphere than a courtroom while not affecting the Reporter's fact-finding duty.

(A)

1.17. Reporter - "I should make it clear also that I do not wish to over formalise the proceedings by putting witnesses on oath but I expect to get truthful evidence whether witnesses are on oath or not".

The following, relatively trivial, example shows that the Reporter is conscious that there may be a formal atmosphere, similar to a courtroom, in the inquiry, or at least that it is possible that some participants might feel a courtroom atmosphere. I noted above that (see Chapter 1) several critics had commented on this "courtroom atmosphere" of a public inquiry. This invitation by the Reporter is an attempt to reduce the atmosphere, to extend informality.

(B)

7.1168. Reporter - "Before we start I would just make an announcement, as you are all aware, Public Inquiries are a less rigid art form than a Court of Law and in these weather conditions if you all wish to remove your jackets, please do so."

While the previous extracts have been examples of the extension of informality the next is an example of a maintenance of formality which acts to restrict lay participation.

(C)

Reporter - "In fairness (Mr. Grant), this is not as strict as a Court of Law but really this information should have been put before the technical witnesses who were giving evidence, like Cremer and Warner, and it is unfortunate that you didn't equip Dr. Edmunds with this information to put these questions this morning."

The objector has put a question to one witness when the Reporter considers that the question should have been addressed to another witness who could have given "best evidence". The principle of "best evidence" avoids duplication of evidence and cross-examination and is supposed to ensure that the Reporter gets the evidence of the most qualified witness on any topic. In this case, this particular witness was not the recognised expert on the field, he was a local politician and thus the Reporter was not interested in his evidence on this topic. At one moment the Reporter asserts the greater informality of a public inquiry but goes on to state that this behaviour is too informal and impedes his role as "seeker after truth". This restricts lay participation because it imposes restraints. In this case the objector would have to know which witness was regarded as the most expert on his particular topic and attend the inquiry at that time. The first piece of

information would not necessarily be available, he might find that that particular witness had already completed his evidence. I describe in Chapter 4 the practical difficulties faced by the objectors in regularly attending the inquiry.

In the next extract (D), the Reporter interrupts a lay objectors cross examination to instruct him on the discipline of cross-examination. The objector makes three mistakes: he gives evidence himself, during cross-examination, he interprets the witness's remarks instead of allowing the witness to explain what he himself means and he inserts value-laden assumptions ("pouring", "uplift the quality" and "backward") without allowing the witness to comment on them. The Reporter tried to tell him how to conduct cross-examination and though by the end of the inquiry, this particular objector had become more proficient, in this instance he quickly terminated his cross-examination.

D

Reporter - I think you are giving evidence again and interpreting what he says. Give the witness a chance to explain what he means by it and you can then follow up if you feel he hasn't given the correct answer.

Objector - Fair enough, I will simply say briefly that these employees that you are pouring in as new trade people to uplift the quality of a backward people.....

Reporter - No, no, really you give us so many throw-away assumptions that unless the witness is noting them as he goes along he isn't going to be in a position to answer the questions.

Objector - I am sorry.

Reporter - Those who are unfamiliar with the discipline of cross-examination because it is a discipline - do tend to tell a wee story before they come round to the question. So if we could ask the witness to react to this statement and say what he means and then you can come back on him. I am not trying to protect the witness from you.

This is another example of the Reporter describing the limits of informality. He operates on the assumption that the formal principles of cross-examination are required to produce useful evidence. Only one point should be made in each question. i.e. if the witness is required to react to an assumption made by the questioner, this ought to be done by the witness, any assumption should be agreed between the witness and the questioner. This presents the Reporter with a set of concise points whose factuality and relevance he can then assess. He does not see his job as an interpreter, he collects facts and does not construct facts by making assumptions, thus he expects cross-examination to provide him with facts.

This insistence on the formal procedures of cross-examination (See Chapter 7 for a discussion of how the lay objectors dealt with the techniques of cross-examination). increases formality and restricts lay participation. It must hamper the layman's free expression to be required to put his questions into particular forms, a technique which for the lawyer, is regular and virtually automatic.

The next extract concerns an objector who has not been able to keep up with the evidence and asks questions which have already been

answered. He becomes very heated in his questioning to an extent that would probably attract censure in a courtroom. (e.g. the threat of being in contempt of court) the Reporter, however shows much sympathy with the objector's predicament and is content with a mild reprimand. Though he prevents the witness from continuing in the same vein, he does not invoke any formal sanctions. The breach of formality is allowed to pass. The Reporter can be seen as encouraging lay participation by treating the breach in a sympathetic manner and by not trying to exercise his authority strongly.

E

Objector: - "In paragraph 2.2 of your precognition you say that investigation was made of all potential sites on the east coast of Scotland. I wonder if you would explain to me why it was limited to the east coast of Scotland?"

Witness: - "I think this was covered in earlier evidence, but my understanding as a marine man, we were given a remit which was to look towards a suitable location on the east coast."

Objector: - "Well I have not been here all the time personally, I would like to have heard your view?"

Witness: - "I am sorry I am not the person to speak about where the pipeline will land."

Objector: - "We get this time and again that each witness that comes from the company, that there is some aspect that you can't speak about, it is somebody else's problem. None of you seem to be able to give a straight answer on the whole range of your subject. You are concerned with the marine aspect, you don't seem to be able to speak to all of it, it is somebody else that will speak to that. Every single one that comes gives that answer they have passed the buck to somebody else. Now who can answer the question?"

Reporter: - "There are witnesses who have been here who have answered the question."

Objector: - "Well I did not hear it, I must confess. I am not often here or I may not have picked up the point, I am sorry."

Reporter: - "I appreciate your difficulty in not being able to attend every day, but you should not vent your anger on this witness."

Objector: - "I am sorry, it is not personal to the witness."

Reporter: - "Who so far has not been evasive. You would be quite entitled to anger if he gets evasive within his own field. I would have hoped that your colleagues could have kept you abreast of what is going on. It is a difficult situation for people who have a job of work to do as well."

Objector: - "Quite that is the problem in a nutshell."

This extract also raises an interesting effect of the policy of "best evidence". For the Reporter, insisting on "best evidence", i.e. accepting only the evidence of the most qualified expert on each particular topic, saves a great deal of duplication both of evidence and cross-examination and this makes the inquiry faster and cheaper. The lay objectors, as in this instance, often had problems caused by this policy. Because of their relative lack of specialised or technical knowledge they sometimes weren't sure which witness ought to answer certain questions so they either asked questions of the wrong witness and were instructed to reserve those questions for later, or they asked questions after the relevant witness had completed his evidence possibly due to the fact that they could not attend the inquiry every day and had difficulty keeping up to date with the evidence.

This insistence on "best evidence" is an example of "formality" hindering lay participation.

(F)

Reporter: - "With the number of parties taking part in this inquiry there is a great risk of endless scope for repetitive cross-examination and this doesn't help me and it doesn't really help parties in the end of the day and it is my intention to be fairly strict on restricting cross-examination. For instance when Shell and Esso are giving evidence I would not expect them to be cross-examining each-other's witnesses nor would I expect the Local Authority to be cross-examining these witnesses unless in the area which may well remain in dispute, which is the area of the Planning Conditions which the Local Authorities would wish to compose. Cross-examination should truly be cross-examination not a further echo in support of the witness's earlier statement. Similarly when we come to the objectors' case being presented I would not expect all the other body of objectors to be cross-examining the witnesses of the main objectors."

In this extract the Reporter outlines the procedures to be followed in cross-examination and indicates that he intends to restrict repetitive cross-examination on the grounds that it wastes the time and money of all the participants without providing him with any new factual information. The Reporter admitted that he had allowed "a fair number of repetitive questions to be put" but he regularly interrupted the inquiry to restrict repetitive cross-examination as the following extracts show.

4.818 - Reporter - A. "I fully understand the importance of this line of cross-examination to your clients but I think I have been more than patient in allowing a fair amount of repetitive questions to be put, I think you have been covering a lot of this ground already today".

4.870 - Reporter - B. "I don't want to restrict your cross-examination but I think this is a subject that is very familiar to all of us from your advocate's cross-examination yesterday and this morning". (Said to an objector who was cross-examining the same witness as the Action Group advocate in the previous extract.)

6.1015

C. To the same Objector.....

Reporter - "I am conscious that your line of cross-examination is very repetitive. It is very difficult to try and split your personality, but in as much as you are co-chairman of the Joint Action Group, I am expecting you to be instructing the advocate on behalf of the Joint Action Group and leaving only for yourself the areas surrounding Barnes Cottage and the outlook which you wish to preserve otherwise I am giving the Joint Aciton Group a double opportunity of cross-examination".

Objector - "I am conscious of that and I am trying to avoid repetition but I am of course an individual objector not only in relation to Barnes Cottage, to protect that, but the enviromment as a whole".

Reporter - "I am very anxious to avoid for all concerned at this inquiry repetitive cross-examination, and if you can assist me in that I will be grateful".

6.1017

D. and again the same objector....

Reporter - "I think again we are getting a bit repetitive here, I think it might assist you to know that as far as I, as Reporter, am concerned I consider it a relevant factor to know what the track record of the company had been".

E. to Witness.....

Reporter - "Don't keep repeating yourself. You stand up well enough to cross-examination without having to repeat your points all the time".

In order to recognise a piece of evidence or cross-examination as repetitive, any participant must be thoroughly familiar with all the evidence and cross-examination which has gone before. Thus, the Reporter's recognition of repetition confirms my earlier remark that the Reporter was involved with selecting evidence and ascribing relevance and facticity continuously throughout the inquiry, i.e. the Report is in an important sense constructed during the inquiry, not after the inquiry. This provides a striking example of how social reality is constructed by actors reproducing social structures. In this instance the Reporter's direction of the inquiry derives from his attempts to reconcile his conflicting functions. For the Reporter to make a decision to stop repetitive cross-examination or to allow an objector to ask "irrelevant" questions, he must refer to criteria based on his perception of his functions in the inquiry. This is part of his "professional frame of reference" which I go on to analyse more fully. It is by reference to this that the Reporter controls and directs the inquiry and constructs his final Report.

The very fact that there was so much repetitive cross-examination during the inquiry from the lay objectors suggests that they do not have the same familiarity as the Reporter with the preceding evidence and cross-examination. There are practical reasons for this such as irregular attendance at the inquiry, lack of access to a copy of the verbatim transcript, lack of time to do the necessary reading and so on. In Chapter 7, I will suggest other

reasons for the Objectors' repetition which is concerned with their different approach to the inquiry.

What assumptions, then, does the Reporter make about repetitive cross-examination in relation to lay participation? In extract B (p129) below he re-affirms his commitment to helping the lay objectors participate;

"I don't want to restrict your cross-examination....."

However he cannot allow participants to ask questions designed to elicit information of which the Reporter is already in possession. Once the Reporter has the information he can decide whether it is relevant and factual, but he does not need the information repeated. In the case of repetition, his role of fact-finder takes precedence over his role as maintainer of informal procedures to enable lay participation. The justification for this is economic; Repetitive cross-examination wastes time and money. The fact that the questioner may have been unaware of his repetition (see example E above) becomes irrelevant to the Reporter. He may be sympathetic but he still exercises his power to control the procedure and restrict repetitive cross-examination.

This restriction of repetition is also a restriction of lay participation. It is an attempt to structure the procedure of the inquiry in a way that suits the Reporter. He makes the assumption

that every participant can, or at least should, approach the inquiry in a similar way to his own. It does not matter whether they actually do or not. The "professional frame of reference" which underpins the Reporter's conduct requires that the inquiry be conducted in a specific way. This is not to say that the Reporter or anyone else is conscious that the conduct of the inquiry is tightly structured but this is the effect of the Reporter's patterned conduct which I interpret as the reproduction of a variety of structural pressures in which inevitable contradictions are somehow reconciled.

To go back for a moment to example F. The Reporter uses the applicant companies and the local authorities as examples. When he warns the lay objectors about repetitive cross-examination, he refers to cross-examination of "their own side" i.e. the evidence of other objectors. However in practice most of the Reporter's interventions to stop repetitive cross-examination were to stop lay objectors questioning witnesses from the applicant companies and the local authorities.

His remarks in example F could be read as a warning to the objectors. However by addressing his remarks to other parties the Reporter avoids the accusation of unfairness or victimisation and attempts to give the impression to the objectors that he is being even-handed by treating them as at least the equals of counsel for the applicants and for the local authorities. In other words this can be seen as another attempt to secure legitimacy.

I now want to pull these examples and some other comments together to form a picture of what constituted "the maximum informality of procedure". I make the assumption that the object of the Reporter's encouragement of informality is to make lay participation easier. Whether informalities allowed by the Reporter actually did make lay participation easier is a question which this thesis will answer, but I think that my assumption, which is based on my interpretation of Circular 14, the Reporter's statements in the inquiry along with observation of the procedure and analysis of the transcript, is justifiable.

In what ways, then did the Reporter attempt to encourage lay participation? He did not require the oath to be taken, he encouraged more informal dress, he excused minor informalities such as losing one's temper, he tolerated much irrelevant cross-examination and evidence, as I have suggested in the examples below. There were many other ways in which the Reporter helped the lay participants which do not appear in the transcript; he was very patient with lay objectors' fumbling attempts to phrase some of their questions, and their sometimes poor diction and voice projection. He rephrased some of their questions to help them get the answer he wanted, ensured that any layman who indicated his wish to speak was given an opportunity to do so, answered some completely irrelevant questions by a very elderly member of the public, showed sympathy with the objectors' problems over lack of time and money and their calls for a Planning Inquiry Commission, and in many other ways demonstrated his sincere desire to give the lay objectors assistance and guidance in their participation. (This was recognised by the objectors.)

I would argue that these efforts by the Reporter to introduce "informality" into the inquiry are an important part of the procedures for securing legitimacy for the inquiry. It is not important whether or not lay participation was made "more effective" by the Reporter's efforts. Legitimation depends on the perceptions of the lay objectors. I look closely at their participation in Chapter 7 and I do not want to pre-empt my arguments there by introducing them at this stage. However I would argue that through such demonstrations of the Reporter's good intentions, decency and sensitivity, that the objectors own beliefs in the absolute justice and fairness of the inquiry system (and perhaps even the democratic process in general) were sustained. The rhetorical claims for justice according to law were reproduced in the inquiry through the personal characteristics qualities of the Reporter. Although it was part of his bureaucratic function to support and encourage lay participation, he required to use personal characteristics which are typically divorced from the official role of a functionary in order to do so. In a sense legitimation was secured by a mixture of charismatic and rational/legal domination. (see chapter 2) By his personal qualities attached to his official position, the Reporter was able to reproduce the rhetoric of "openness and fairness" in the social practices of the inquiry. I discuss this more fully in Chapter 7.

This emphasis on informal procedures assisting lay participation conceals an assumption that there exist some formal procedures which might otherwise operate to restrict lay participation. In Chapter One I argued that there has always been a link between the court system and the public inquiry and that the

adversary procedure has always been common to both. Thus it seems that in order to enable lay participation, the inquiry has been made more informal than a court, where laymen very rarely conduct their own cases. Though the adversary procedure is basic to both, the atmosphere of the inquiry is very different. The advocates wore morning dress but not robes or wigs, the rest of the participants wore suits or more casual clothes. Participants, journalists and members of the public were constantly entering and leaving the room, trying to do so quietly but without the exaggerated tiptoeing and bowing practised in many courtrooms. The inquiry was noticeably noisier than most courtrooms I have been in. Though the procedure of the inquiry was dominated by lawyers, numerically laymen, such as company experts, journalists, civil servants and local authority executives were in the majority. Before and after the inquiry and during the intervals there developed a social life of the inquiry amongst the participants. Groups intermixed to drink coffee, walk in the park or eat lunch and the atmosphere was cordial if not friendly. In a courtroom it may be that the officials and lawyers associate with each other, but it would be rare for defendants and witnesses to join them.

In these ways then, the inquiry is more "informal" than a courtroom and the Reporter actively encourages this informality. Does this mean that the critics accusing the public inquiry of being overformalised and indistinguishable from a court for most people, are wrong?

While I would argue that the legislative changes to the procedural rules, (see chapter 1) have altered the atmosphere of the

inquiry towards more informality and that the lawyers at the inquiry certainly saw the procedure as more informal. I think that the dominance of lawyers, the use of the adversary procedure and the language of the inquiry still led to it being indistinguishable from a court of law for most people who probably have very little experience of either.

Aside from peoples' impressions of what the inquiry felt like, what balance was maintained between formality and informality and what effects did any encouragement of informality have?

I would argue that most of the relaxations in the inquiry are at the level of appearances on the surface of the inquiry. The absence of oath-taking, the absence of formal dress, the sympathy with angry objectors, and the Reporter's friendly attitude, may have relaxed the lay participants, but did it make their participation more effective and easier? It may have given them confidence to speak, but did it help them to say the "right" things?

Several of the earlier extracts were examples of the Reporter restricting informality and maintaining formality. He encouraged the lay participants to cross-examine and put forward their arguments but he still controlled how the cross-examination should proceed and what it should include and exclude. He consistently insisted on the formal techniques of cross-examination. He would not accept evidence given when the questioner was meant to be engaged in cross-examination, discouraged repetitive cross-examination, insisted on "best evidence", insisted that examiners allow witnesses to interpret their own remarks, encouraged the "one

question one piece of information" model of cross-examination and allowed very little repetitive cross-examination.

Thus the Reporter encouraged an informal atmosphere to develop in the inquiry and adopted a helpful attitude towards the objectors, but at the same time he demanded that the formal techniques of cross-examination be adhered to. These techniques are required to produce the sort of evidence the Reporter needs. In this form he can assess its factuality and relevance. Thus the Reporter puts most weight on his fact finding role - any relaxation of formality must not interfere with that. His next priority is efficiency; the saving of time and money. This is the sort of balance that the Reporter operates, with "informality" of procedure to encourage lay participation having a lower priority and only allowed to operate on the surface of the inquiry, (the atmosphere), so that it does not interfere with the Reporter's central function of fact-finding. Note that I am not suggesting that the Reporter consciously attaches a low priority to encouraging lay participation. In fact the Reporter as an individual could hardly have been more sympathetic towards the lay objectors. Rather, the ways in which he saw himself as being able to encourage lay participation restricted "informality" to the surface of the inquiry while maintaining a quite precise control of these procedures which most affected the collection of information.

Summary

This chapter is the first of four which examine how the inquiry is constructed as a social event through the reproduction of structures in the social practices of the participants.

This analysis is necessary in order to investigate how legitimation operates during the course of the inquiry. I want to explain how it is that the objectors are both sceptical of the inquiry and at the same time obedient and respectful participants.

I argue that the Reporter has discretionary control over the procedures during the inquiry. He is constrained by very few public procedural rules, but is guided by a number of rhetorical instructions to keep the inquiry open and informal in order to encourage lay participation.

This "democratic" role which he is encouraged to perform is in tension with his "technical rational" role i.e. the efficient collection of relevant facts. I argued that the Reporter reproduced the rhetorical claims of "openness and fairness" in his personal attitude towards the objectors and in certain relaxations in the surface appearances of the inquiry. So long as it did not substantially interfere with the efficient conduct of his bureaucratic function, the Reporter made what he considered to be genuine efforts to encourage lay participation. This substantially secured legitimation because the objectors responded to his displays of decency and fairness and believed that they were playing a significant part in the inquiry.

This then, is the "directive" role of the Reporter and his interpretation of the "maximum informality of procedure". He approaches the inquiry with a frame of reference consisting of a set of guidelines for organising the procedure in the inquiry and certain criteria for ascribing facticity and relevance to evidence

presented to him.

It is these criteria that I go on to examine in the next two Chapters and I will then discuss the Reporter's "frame of reference" in more detail. This is crucial in describing the conduct of the inquiry, both in terms of the constraining influences on the Reporter and the potential for change.

CHAPTER 5

The Reporter 2 - the criteria of 'Relevance'

In Chapter 4 I described the Reporter's role in organizing and controlling procedures at the inquiry. His operational definition of "informality" permitted certain lapses from the formal procedures of the courtroom and also manifested itself in the atmosphere of the inquiry and in the Reporter's helpful and sympathetic attitude towards the objectors. However he also maintained the normal adversary procedures, insisted that certain techniques of cross-examination be followed, and in a number of other ways restricted and ordered the participation of the lay objectors. Thus, though on the surface, the inquiry appeared more "informal" than a court, the Reporter maintained precise control over most of the procedure. I argued that this "informality" could be explained by the overriding importance to the Reporter of his role as "fact-finder" and it is this role that I turn to examine in the next two chapters, i.e. I now investigate how he performs his "technical rational" role which, I argue, takes precedence over his "democratic" role.

(1) The Final Report

At the end of the inquiry the Reporter produces a final Report. It is on this document that the Secretary of State bases his decision. The Report is in three parts (1) A summary of the evidence (2) The Findings of Fact and (3) The Reporter's recommendations and conclusions.

The summary of evidence consists of a precis of the evidence of each witness arranged in the chronological order in which they appeared. The Reporter has to summarise any written precognition of evidence and evidence led at the inquiry and in addition select those parts of the cross-examination which he considered either contradicted

or seriously challenged the evidence.

The Findings of Fact is a very much shorter document. This reduces the inquiry to a number of factual statements on a series of "issues" such as environment impact, hazard etc.

It is at this stage that the Reporter's interpretative scheme becomes more obvious. This document is less a matter of summary and more a matter of selection. All the participants at the inquiry were concerned with "issues" e.g. safety, economic benefits, the effect on amenity-value, but the issues that concerned the Reporter made their first public appearance in the Findings of Fact apart from isolated indications of his concerns made in remarks during the course of the inquiry. My argument is that the Reporter always had the construction of the Findings of Fact in his mind, from the beginning of the inquiry. He wanted to get "the facts" on particular issues, but there was never any public announcement as to what these issues were or what criteria the Reporter used to determine "a fact".

By comparing the "findings of fact" with the "summary of evidence" in this chapter and the next, I examine the criteria of "relevance" and "facticity" employed by the Reporter during the inquiry to analyse and control cross-examination and, in effect, construct the final report. I argue that the Reporter does not restrict cross-examination arbitrarily but does so in order to make it easier for him to construct the 'findings of fact'.

Formal Guidelines

The Findings of Fact are the most important part of the Report. It is this information on which the Secretary of State will base his

decision. These are the 'facts' he will use to justify his arguments for or against the development. This is the primary role of the inquiry in the process of technical rational decision-making. One measure of a party's success in the inquiry, could be the extent to which their evidence appears in the findings of fact. If any decision has to be justified on the basis of publicly declared "fact", then a party which has the majority of facts favouring their case stands a greater chance of success. In the Moss Moran inquiry the oil companies were successful in having their evidence accepted as "factual" and "relevant" by the Reporter, the lay objectors, very unsuccessful. Why was this?

I will examine the participation of the lay objectors and I will look at the kind of evidence they present in chapter 7. Firstly I want to see what sort of information is available to lay objectors on the criteria of "relevance" and "facticity" employed by the Reporter. There are no public definitions of such criteria in any of the legislation nor in any government memoranda. One indication came from the Reporter near the beginning of the inquiry,

"What is in my mind is the question, "What is before the Secretary of State?""

This does not appear to be of much help. It must be understood in relation to stated Government policy - which is accepted as a "fact" in the inquiry. In this case the policy was to generally encourage the commercial exploitation of North Sea Oil resources. (see Chapter 3) Given this policy, "the question before the Secretary of

State" is narrowed down to:

Should these applicants be allowed to
construct this development on this
particular site?

Thus it is clear that such issues as the advantages of wind, wave or solar power over irreplaceable oil resources, or the damage to the environment from non-biodegradable plastics, would not be relevant to this inquiry. There are still however no precise specifications. Circular 14's instructions to Reporters are no more clear. The Reporter is urged to satisfy himself on "all the relevant issues" but there is no attempt to define what is to count as "relevant" or as an "issue". In two senses, of course, this is inevitable. Each inquiry will be concerned with different, specific issues and it would be impossible to be precise in advance of the case. However, there were no public indications in this particular inquiry and it is left to the discretion of the Reporter to construct and apply the criteria of "relevance" and "facticity". These are only available to an observer by studying his remarks and actions during the inquiry and the differences between the "findings of fact" and the "summary of evidence." These techniques are obviously not available to lay objectors before the inquiry begins.

Secondly, this is an example of the gap between rhetorical instructions and the actions which these are intended to govern which I discussed in Chapter 2. The precise meanings of "relevant" and "issue" only exists in the social practices of this particular inquiry, in the same way as the meaning of "informality" can only be found by examining the participation of the lay objectors and the

various restrictions placed on their participation. These meanings derive from the reproduction of a particular "professional frame of reference" shared by the Reporter the lawyers and experts.

Steward Asquith (Asquith 1977) makes the following observation,

"under a model of professional decision making, the ultimate justification of a decision is that the decision was made through the correct exercise of professional judgement."

The criteria on which such judgement is based, according to Asquith, are drawn from a stock of professional knowledge which he calls a "frame of relevance". This provides a basis for a shared understanding of a problem for those who have access to the "frame of relevance", though there may be room for disagreement and contradictions within the frame.

This concept of "frame" is useful for my analysis of the underlying structure of a public inquiry. Because I have used 'relevance' in a different context in this study, I want to use the term, 'frame of reference'.

The "frame of reference" in this inquiry consists of the criteria for the ascription of "relevance" and "facticity" to evidence and the standard techniques of examination and cross-examination used by advocates (Chapter 7). To share this frame of reference is to share a model of the inquiry. Knowledge of those issues which are "relevant", of what counts as a "fact", and how to present evidence and cross-examine opposing witnesses, is a form of power. This is how the

inquiry operates. If as an objector you don't share this knowledge, then neither effective participation nor effective political opposition is likely to be possible.

I will argue in Chapter 7, that the instructions and principles describing "informality" and attempting to encourage lay participation have their practical significance through the exercise of power by the Reporter and the lawyers. That is to say, the Reporter reproduces, in the inquiry, a frame of reference, which constitutes the practical significance of terms like "maximum informality of procedures" and "all the relevant issues", which otherwise exist as rhetorical claims with a range of potential meanings rather than a particular practical significance.

The Reporter is encouraged to adopt a directive and inquisitorial role in the inquiry. In comparison, a judge in a court of law, is responsible for the direction of procedure but leaves most of the questioning to the lawyers on either side. The Reporter in this inquiry, regularly questioned witnesses, as he said

4:2 "in order to get these points quite
clear in my mind",

and these interjections give the observer indications as to how the Reporter operates and glimpses of those criteria he applies to ascribe "relevance" and "factically" to evidence. Given his insistence on efficiency i.e. avoiding time-wasting during the inquiry, it is reasonable to assume that the Reporter only intervened where he thought it was important. He would not ask irrelevant or repetitive

questions himself.

I repeat my argument here. In order to interrupt and direct the inquiry, from the start, the Reporter must have had criteria of "relevance" and "facticity" which he used to assess evidence and cross-examination as it was being performed. In his function as "information-gatherer", the Reporter is concerned with the construction of knowledge. Habermas and other philosophers of method have argued that knowledge is always the production of certain interests. (Habermas 1971a) They reject the arguments of empiricist philosophers who, crudely speaking, see the mind as a bucket or tabula rasa waiting to be filled by sense experience which constitutes knowledge.

It is not necessary here to get involved in complex philosophical discussions concerning the relative merits of competing claims as to what constitutes "knowledge". My argument here is straightforward. The "findings of fact" are constructed by the Reporter, using specific criteria of selection, from the total evidence and cross-examination during the inquiry. These criteria of "relevance" and "facticity" constitute an important part of his "method" for participating in the inquiry. In other words "the facts" do not somehow present themselves in the inquiry, they acquire the status of "relevant" facts" by the Reporter operating specific criteria.

This is not to say that the Reporter is necessarily aware of these precise criteria, his work in the inquiry might seem to him to be a product of "common-sense" or to be, "second-nature" to him. However, his actions and speech during the inquiry reproduce

structures which include criteria for ascribing relevance and facticity to evidence which are not shared by lay objectors. Their notion of "common sense" would refer to quite different criteria of "relevance", for example.

In this instance, there are no public descriptions of what constitutes a "relevant fact" for the Reporter, but by analysing his participation and his construction of the Findings of Fact, I can describe those criteria he uses and suggest their origins. I show the methods and assumptions which the Reporter reproduces in this construction of the final Report. It is not, in any absolute sense, neutral or objective, but I will argue that this has nothing to do with any personal or political bias on the part of the Reporter. In terms of structuration; the Reporter reproduces different structural resources to which the lay objectors have only limited access.

In this chapter I locate the structures of "relevance" through an analysis of the Reporter's own comments and actions during the inquiry and by comparing his selective "Findings of fact" with his "summary of evidence".

Transcript Extracts

The first two examples show the Reporter specifying a particular substantive area, in this case, that of alternative marine sites, as relevant.

4:3 Reporter:..... "My own thinking on the subject
of alternative sites is that the
prime site that one must look to
is the marine site; both at Peterhead

and in my reading for this inquiry, I have had that born(sic) in on me that the key to the development is the suitability of a marine site and if an alternative marine site cannot be produced suitable to marry up with an alternative land site then it may be an abortive exercise to follow up the detail of the land site."

4:4 Reporter:..... "Could you give me information of what you are seeking, because I mentioned at the beginning of the inquiry, and I think it has been borne out by the evidence, the key to the development is the findings of a suitable marine site, and working back from that is then a secondary operation."

These examples also support my argument that the Reporter operates with criteria of "relevance" and "facticity", from the beginning of the inquiry. His reference to "my reading for this inquiry" indicates that he has prepared for the inquiry. He has determined for himself those issues which are relevant and the most important of these is the suitability of the marine site for the tanker terminal. This was, in fact, the major single focus of attention during the inquiry. It was the tanker terminal rather than the Moss Moran plant which affected the communities of Dalgety Bay and Aberdour.

Another example of what constitutes "relevant" evidence can be seen in the following example. Here, the Reporter interrupts cross-examination to clarify an issue. An objector has been asking about the possible effects of a pipeline rupture and the witness has been trying to argue that the line has been designed such that the likelihood of a rupture is minimal. The Reporter's interjection

indicates that while pipeline design is relevant, the real issue is the quality of the design engineering. He secures an admission from the witness that a rupture would be hazardous but then implies that the real issue is that of monitoring the design to minimise the risk. One might argue that the Reporter gets the admission from the witness, to keep the lay objector happy. The lay objector was dealing with a relevant issue but in the wrong way. (see Chapter 6)

4:5 Reporter "I think we are getting a bit repetitive there..... would you agree that if a major rupture of the line were to occur, they would at least have cause for concern?"

Witness "At that moment you mean?"

Reporter "Yes."

Witness "Indeed."

Reporter "If that rupture did occur then they are in trouble?"

Witness "If it would occur they would be in trouble."

Reporter "So it is the job of the pipeline engineer or the designer of any system that the likliehood of this happening is as low as you can obtain from any human product that you make."

Witness "Of course."

Reporter "I would find it helpful if you would amplify the evidence you have given on page 5 of your precognition....."

The following example shows that the Reporter has not been satisfied by either evidence or cross-examination on the topic of the mode of supervision of jetty operations. He asks a list of detailed questions, indicating that he considers the issue to be relevant. Circular 14 urges the Reporter to ensure,

4:6 "the fullest possible explanation of the applicants' proposals."

The Reporter used his inquisitional powers in this way on a number of occasions, where he felt cross-examination had insufficiently tested the applicants' evidence.

4:7 Witness "Are you interested in just the loading system per se or the communication system?"

Reporter "What I am particularly interested in is the communications system and in the manpower whose job it is to ensure that things are in fact carried out correctly....."

" "What is the function of the Board man as you describe him?"

" "Is there a remote T.V. control, can he see the jetty?"

" "Now this seems a fairly heavy responsibility for one man. Is he on long shifts?"

" "I don't want to be frivolous on a very serious aspect of it, what I am really testing is the risk of the Board man becoming a bored man and missing out on these visual checks?"
(The Reporter continued with a series of detailed questions on plant layout, hydro-carbon disposal and labour requirements.)

In the next extract the Reporter gives a general statement of his aim in the inquiry, a kind of cost-benefit analysis of the project. Again this does not specify his criteria of relevance, but gives another indication.

4:8 To an objector cross-examining.....

Reporter "I could perhaps mention the fact that the companies hope to make a profit is not a valid reason for turning them away from Moss Moran and Braefoot Bay. It is quite valid for you to make the point that they don't come bearing gifts

exclusively. But they are hoping to make a profit, and the debit and credit, the balance sheet that I will be drawing up, isn't whether they are going to make a profit or not, but whether the overall benefit and disadvantage to the community is one that says they shouldn't come here at all."

The Reporter's use of the negative "shouldn't come here at all" could be read as indicating sympathy for the objectors' case, he could just have easily have said

"whether the overall benefit and disadvantage to the community is one that says the development should go ahead."

Thus though he begins by criticizing the objector's cross-examination as irrelevant, he softens his criticism at the end with a gesture of sympathy. In a similar way to that seen in example C above (Chapter 4), the Reporter seems to deflect attention away from the strict "irrelevance" of the objectors' cross-examination by his indirect expressions of sympathy: another example of the "surface informality" of the inquiry.

The Reporter gave no direct explanations of his criteria of "relevance". He mentioned certain subjects and issues which he considered relevant and made some general statements about his role in the inquiry. The latter were non-specific and can be considered as rhetorical claims, in the same way as I dealt with "maximum informality of procedures" in the last chapter. That is to say, we can only see the significance of "benefits and disadvantages to the community" when we examine the precise meaning of this in terms of the final Report e.g. what "community" is the Reporter talking about,

the local objectors, the people of Aberdour and Dalgety Bay? Fife? Scotland? or Britain? What counts as a benefit to the community? How does the Reporter compare hazard probability statistics with the expressed fears of the objectors for their children's safety? The effective significance of these claims depends on their practical meaning in the final report.

Though, as I described in Chapter 3, the Reporter frequently interrupted lay cross-examination because the techniques were inappropriate, he was more reluctant to stop cross-examination because it concerned an irrelevant topic, even though a great deal of the lay objectors' cross-examination was on topics which did not appear in the findings of fact e.g.

4:9 Objector: "Now I don't want to say very much on this one, but you pride yourself on your community relations, your record of community relations?"

Witness: "Yes."

Objector: "I find this a little bitty puzzling, perhaps we are a particularly dour people, for example, I find one or two things in your paper slightly offensive - does that surprise you?"

Witness: "I apologise, it was certainly not my intention."

Objector: "Well, to take one example, you give one figure and I want to ask your confirmation of this, you mention 6 million dollars you propose to spend in 1977. Do you in fact mean pounds?"

Witness: "No..... this is in dollars."

Objector: "Americans are very sensitive about being treated as colonials and they should be the first people to appreciate that other people might be equally sensitive, I find it offensive to have that figure given

to me in dollars dealing with my own country."

Witness: "I am sorry."

4:10 Objector: "You said that Esso Chemical made only a small profit last year?"

Witness: "Yes."

Objector: "Sorry about that, by the way, what about Esso Euro-Chemical is it?"

Witness: "Esso Chemical Europe."

Objector: "Did they make a profit?"

Witness: "They made a profit but not an adequate one."

Objector: "Could one ask what it was in sterling?"

Witness: "You can, but I don't think I can recall it, I think we published it."

Objector: "I hope that Exxon at least made a profit?"

Witness: "Yes, they did all right."

This type of questioning was quite commonly used by lay objectors in cross-examination. Providing that the questions generally fitted the techniques of cross-examination described in the last chapter the Reporter rarely intervened. He was keen to stop repetitive cross-examination and did so frequently, but was more lenient with irrelevant cross-examination.

Where a relevant issue was concerned, the Reporter insisted that the techniques of cross-examination be maintained. This would make it much easier for him to establish whether evidence had stood up to cross-examination and which evidence constituted a factual finding. Had he allowed laymen to be less formal in their techniques his interpretative and analytic work would have been much more difficult.

However if the topic of questioning was not relevant this really only took up the time of the inquiry rather than made his job more difficult.

Thus questioning such as in 4:9 and 4:10 above can be seen as an extension of participation. The questions are irrelevant to the final report but they allow the laymen to express a view, and the Reporter does not see it as his function to silence the objectors, but rather to attempt to structure their participation in a way that best serves his functions in the inquiry. That is, he will allow the objectors to participate except when their participation interferes with his primary function.

John Roger, amongst others, has described the inquiry as a forum for allowing the objectors "to let off steam", and these extracts may be examples of this. I would describe these as further examples of the procedures through which legitimacy is secured in the social practices of the inquiry.

From the point of view of the Reporter, the questions are innocuous, if time consuming and irrelevant; the sort of questions which oil company representatives should be able to deal with as a matter of public relations.

From the point of view of the objectors, I would suggest the questions represent an attempt to realise the rhetorical claim of "equality before the law". The point of these sort of questions is to ridicule the oil company, through its representative, by locating errors or absurdities or insults in their evidence: to bring the "big

men" down to size and demonstrate that, in a democracy, the "little man" is equal in intelligence, perception and wit and is only defeated by his position of powerlessness. The objectors may derive a sense of dignity and worth from having made an active public attempt, as they might see it, to defend their homes and families from bureaucrats and trans-national corporations. If this analysis is correct, then one can see the importance of the inquiry in terms of legitimation. The inevitability of the outcome, and the resultant devaluation of the inquiry, both perceived by the objectors, become less important than "putting up a good show". The objectors, in the name of notions such as "justice" and "equality", accept their democratic rights and responsibilities and their public exercise of these seems to make them less angry about the final outcome. I will discuss these ideas at greater length in chapters 6 and 7.

In this section, I have argued that there are no formal indications as to what constitutes "a relevant fact" in the inquiry, and also that where there are indications either in documents or in the comments or interventions made by the Reporter himself during the inquiry, they are non-specific. I argued that the Reporter will generally allow the lay objectors to participate in cross-examination. He will not stop irrelevant cross-examination but only that cross-examination which does not follow the standard techniques or which is repetitive. There is, then, very little information available to the objectors even in the form of allusion during the inquiry, as to what constitutes a relevant fact. In the next section I try to establish the criteria of relevance which were used by the Reporter and which form a crucial part of his "frame of reference". This "professional knowledge" structures not only his participation in the inquiry, but

inevitably, the conduct and procedures of the inquiry itself.

(3) Findings of Fact - The Contents

These 70 headings take up only 12 pages of over 400 in the Final Report. There are several reasons for this brevity.

- (1) A great deal of the cross-examination, and some of the evidence was considered irrelevant. As I mentioned above, the Reporter did not generally stop lay cross-examination solely on the grounds of irrelevance.
- (2) Justificatory arguments and lengthy technical detail are not included in the findings of fact which deals only with "conclusions".
- (3) Several witnesses gave evidence on the same points. While the summary of evidence paraphrases the evidence witness by witness, the findings of fact deals with the evidence in terms of issues. Thus several witnesses might have given duplicate evidence on the same issue.

The following issues appear in the Findings of Fact; Factual Background (including Government policy on the use of North Sea Oil resources), a statement of the evidence on the unsuitability of proposed alternative sites, the design and construction of the plant and terminal, a statement of the nature of the hazard and various conclusions to be drawn from the evidence on this matter, the absence of information on potential downstream development (i.e. those

manufacturing industries which would use the products of the Moss-Moran plant), the adequacy of the infrastructure and the economic costs and benefits of the scheme to the community.

These facts did not appear at the inquiry in this particular structure or order. The information is drawn from the evidence of a number of witnesses, how was it organised in this particular way?

Looking in more detail at the content of the 70 headings it is possible to construct an argument which links the facts together and would account for their particular ordering.

"In 1980 there will be available from the the Brent Field, gas which needs to be processed rather than flared off or burnt to realise its full value as a feedstock for the petro-chemical industry. It is Government policy to encourage the full development of this industry based on the oil and gas from the North Sea.

The Moss Moran site is excellent for the N.G.L. plant, but Braefoot Bay would not normally be considered for development because of its natural beauty and amenity value. There would have to be convincing evidence of pressing need before the site would be approved.

There is no evidence which suggests the existence of an alternative site in Scotland which would not require the costly construction of a new harbour.

Given the suitability of the sites, the evidence suggests that the plant can be designed and constructed with an acceptable level of risk, though a full hazard and operability audit would have to be carried out before the plant came into operation.

There is not much known about the behaviour of vapour clouds but this is not a problem because the maximum credible spill of petroleum gas from any part of the

development is too small for the formation of such a cloud.

The environmental effects of the plant can be controlled to a level within acceptable limits and there is adequate infrastructure to support the development.

The plant would realise significant export earnings for the U.K. economy and contribute to the rates in Fife Region (though this would be reduced by a reduction in rate support grant) and though the immediate local employment effects would not be large, real employment benefits could accrue with the arrival of downstream development."

A crude summary of this argument might read as follows,

"It is very necessary to build this plant somewhere; no-one has found anywhere else to build it, it can be built so that it has no undue effect on the environment and so that it presents an acceptable risk to the local communities, therefore the development should go ahead."

Part of the Reporter's function is to collect information, or to construct knowledge in the form of these "Findings of Fact". This document is constructed by reference to the above crude argument - framed interrogatively.

"What are the economic and commercial reasons for the construction of this development? Is the site suggested suitable? What will be the effects on the environment? How can these be measured and compared to the economic benefits? How does one decide what level of risk is acceptable."

In other words, although the Reporter is not responsible for making the decision, he collects information, as if he had this

responsibility. These points are relevant because they are the technical/rational issues on which the Secretary of State will require facts, so that he can make a decision. Information is not collected neutrally nor in a vacuum, it is collected for a purpose, in this case to conform to the categories which the Reporter knows that the secretary of State will find relevant. Thus the Reporter approaches the inquiry with this scheme as part of his professional frame of reference. The relevant issues are economic need, suitability of site, degree of environmental impact and level of risk.

"Economic need" is defined according to Government policy and so, for example, arguments about the desirability of a no growth, ecological economy will be deemed irrelevant because it has been accepted for the purposes of the inquiry that it is an economic priority to exploit our oil resources. This is an example of how the State, through the public local inquiry, intervenes to provoke certain conditions within which favoured economic activity can thrive.

As regards the suitability of the marine site, the Reporter can consider the evidence on suitability of various sites produced by either side, but is not himself empowered to search for alternative sites, nor are the objectors required to provide alternative sites but can simply challenge the company's selection of one particular site. The criteria for measuring environmental impact and comparing it with economic benefit are not made clear. The Reporter collects information (facts) on the changes to the local environment rather than peoples' opinions on how the changes affect them or how they perceive the changes. There is an assumption that if the economic need is established, then environmental changes will be regulated by

planning conditions or particular residents may be compensated - but that the plant will go ahead. In this case the argument from economic need was considered as of the first importance.

As "risk" was felt by the Reporter and particularly by the Objectors to be of central importance - I concentrate on this issue in the next chapter on the criteria which establish "facticity". The Reporter's position was to ensure that every aspect of the design had been assessed to the highest standards of the industry and that this process was monitored.

In other words, the Reporter is collecting information relevant to making a planning decision. Planning, as McAuslan (McAuslan 1979) comments, is concerned with the maintenance of the status quo, with the reconciliation of conflicts according to a set of political priorities. These political priorities are, for the purposes of the inquiry, "facts", and as such are not to be challenged during the procedures of the inquiry. This is the sense in which John Roger (Roger 1978) comments that a political decision is transformed into a technical decision. There could have been political debate concerning the desirability of exploiting oil resources, alternative criteria for weighing up economic need against environmental damage, or for assessing risk acceptability etc. but these were all irrelevant to the inquiry because the political decision had already been made. It was considered economically essential to exploit our oil resources. The inquiry concerned the technical specifications of the proposed plant and terminal. The Reporter intended to ensure that the standard practices for design and safety had been adhered to, but was not about to start setting new standards or instigating new procedures without

concrete evidence that the existing standards were inadequate. (It is this point I consider in more detail in the following chapter.)

The proclaimed extensions of "informality" and the consideration of "all relevant issues" are not designed to allow a different mode of democratic participation e.g. by allowing a small group of objectors to argue about how, if at all, the State ought to use oil from the North Sea. The latter is a task for Parliament, in terms of liberal-democratic theory, or for the Civil Service in consultation with the Government and certain multi-national corporations, according to a cynical objector.

This is only to consider one "function" of the inquiry - that of providing the Minister with information which is "relevant" to the political decision he must make, in the terms outlined above. But, as I argued in Chapter 1, if it is evident to the lay objectors that the inquiry is a formality which conceals the true nature of decision making, then why do they bother to participate? The answer lies in the legitimating function of the inquiry. Very few participants in the inquiry shared the cynical view caricatured above, certainly not the Reporter nor most of the objectors. (see Chapter 3 and 7)

I have described the "fact-finding" function of the Reporter as being of prime importance to his control of the procedures of the inquiry. Amongst competing claims, the speed and efficiency of the inquiry, the encouragement of lay participation, full investigation of the issues etc. I argued that fact finding took priority. However the Reporter himself had a much less precise notion of his own function and , I would suggest, saw himself as constantly balancing the

contradictory claims in an attempt to achieve fairness or justice. It is a tribute to his skill, that the lay objectors were generally satisfied with the conduct of the inquiry.

Some evidence of the Reporter's "sympathetic attitude" can be seen in his recommendations. I crudely caricatured, what I saw as the essential argument of his recommendations. This was modified in the document by reservations, conditions and qualifications which, while they do not destroy the central argument, nor conceal it, may make it more palatable to those objectors who feel that their political rights have been dangerously eroded.

While asserting that he had not heard any evidence which showed the existence of a suitable alternative site, he mentioned that the objectors were not required to produce evidence on alternative sites and would not have had sufficient resources even if they had wanted to produce such evidence. He also mentioned that the objectors, on a number of occasions, had asked for a Planning Inquiry Commission. This body would have had the scope to acquire detailed evidence on alternative sites at public expense. The Reporter was sympathetic to the criticisms of the inquiry system made by the objectors e.g. their lack of time and money, and listened patiently to their requests for a P.I.C. While the Reporter recommended approval of the development and expressed confidence over its safety, he also expressed his regret over the destruction of the amenity value of Braefoot Bay, and recommended that the Health and Safety Executive monitor a full hazard and operability audit on the plant, before it comes into operation, to ensure its safety. Finally, he regretted the costs to the local community but had decided that the benefits to the national community

were sufficiently great to recommend approval.

In these remarks the Reporter displays a sensitivity to the objectors' case and to the problems they faced in taking part in the inquiry. This sensitivity was manifest throughout the inquiry. However his recommendation is that the development be approved and this decision can be made by the Secretary of State and justified on 'the findings of fact'. These remarks may somehow make the objectors feel better but they do not affect the basis for the final decision and need not be a relevant consideration for the Secretary of State.

I have described the evidence which was included in the 'findings of fact' and argued that the criteria of 'relevance' governing their inclusion derived from the Reporter's model of his fact-finding role in the inquiry. Before commenting further on this model I want to look briefly at the evidence which was excluded from the findings of fact, i.e. that evidence which was considered either "irrelevant" or "non-factual" or both.

(1) Best Evidence

The Reporter stated that he would only accept the evidence of the most "qualified" witness on any particular topic. Thus though several witnesses gave evidence on the suitability of alternative sites and on shipping movements in the Forth, the evidence of the Forth Ports Authority was accepted as the "best evidence" on these topics and appears as such in the findings of 'fact'. As we have seen, during the inquiry, the Reporter often restricted the presentation of evidence or cross-examination because the best evidence on that topic

had already been given or could be expected to be given by another witness. The Reporter occasionally announced which witness he held as "most qualified" but there were no formal principles made publicly available to justify the Reporter's choice. His rule of thumb seemed to be to select either the most senior official of an organisation or else the witness whose advertised expertise seemed to correspond most closely with the particular subject under investigation. The governing assumption seemed to be that experts and specialists had a monopoly of knowledge in their field, unless it was proved otherwise. The fact that evidence was organised by witnesses rather than by issues, meant that this category of "best evidence" was important, but this mode of organisation further hampered lay participation because they could never be sure which witnesses evidence was going to be "best evidence".

(2) Cross-Examination

This will be excluded from the 'findings of fact' where it challenges irrelevant or non factual evidence or where it is inaccurate or wrong and thus does not challenge relevant factual evidence. Most of the time of the inquiry was taken up by cross-examination of the applicants, local authorities and their "experts" by the objectors. Very little of this cross-examination appears in the findings of fact and was therefore "unsuccessful". This doesn't mean to say that it was irrelevant, it may have served other functions, e.g. as a challenge to the applicants to convince the Reporter that their facts were accurate, or , politically, to legitimate the exercise of power over the local community, but it did not provide the Reporter (or the Secretary of State) with facts which might have caused

approval to be with-held.

(3) Other Excluded Evidence

Most of the evidence of the applicant companies, including the complete evidence of six of their witnesses on the design, layout, and operation of the plants is included in the findings of 'fact'.

Only small sections of their evidence were excluded: e.g. policy evidence on the nature of the company's structure, the current and possible future state of the oil industry and the practical accomplishments and future policies of the companies. This evidence was either irrelevant or a matter of opinion rather than fact. (see Chapter 6)

The evidence of their hazard witness was largely excluded as was the evidence of the planning witness appearing for both companies. The controversy over hazard will be discussed at length in Chapter 6. The policy evidence was considered non-factual and irrelevant by the Reporter because it did not fit in to his underpinning argument. The evidence of the planning witness was excluded either because it was opinion rather than fact or because other witnesses gave the 'best evidence' on several topics covered by this witness.

Most of the evidence of Cremer and Warner, the independent assessors hired by the local authorities was in the findings of 'fact'. The exception was their evidence on hazard. The evidence of the Health and Safety Executive was excluded in its entirety because of 'best evidence' from another witness (often Cremer and Warner) or

because the evidence was opinion about facts rather than facts themselves.

With the exception of their comments on the local employment statistics and the provision of infrastructure, the evidence of the local authorities, councillors and planners was excluded from the findings of fact. Their evidence was either opinion or statements of policy neither of which were considered 'factual' by the Reporter.

The only pieces of the objectors' evidence to appear in the findings of 'fact' are some of their experts' information on the hazards of vapour clouds, and evidence on the problems of hiring skilled labour in Fife. It might also be argued that the Reporter's early comments on the beauty and amenity of Braefoot Bay reflect the evidence of many of the objectors. Objectors' evidence excluded from the findings of 'fact' includes the Regional Council's policy on industrial strategy, the attractions of the area to a prospective labour force, the destruction of amenity, national energy policy, the world food supply, swimming, air pollution, noise, the history of Inchcolm and sailing. In Chapter 6 I discuss the evidence of a Conservation Society witness, which did not appear in the findings of 'fact'.

Evidence on Regional Council policy is irrelevant to the findings of fact and to the inquiry as are remarks about national energy policy. Both national and local government policy are treated as facts for the purposes of the inquiry - political debate over policy takes place in the House of Commons, or the Council chambers or constituency meetings but not at a public local inquiry. Evidence on

noise and air pollution were excluded because it was non-factual, i.e. the evidence was not based on experimental evidence (see Chapter 6), though the topics may have been relevant. Evidence on swimming, sailing, the cultural heritage of Inchcolm, the potential diminution of the attractiveness of the area as a home and the destruction of amenity did not appear as factual evidence in the findings of fact. However, this evidence, a substantial part of the objectors case, appeared in the Report in the form of the Reporter's expression of regret at the local costs of the development which were outweighed by the national benefits.

"Relevant" topics, then fall into three headings.

- (1) Economic - What are the costs and benefits, locally and nationally of the development? A large part of the objectors' evidence presented the local costs, expressed in non-quantified terms of the loss of amenity, destruction of the quality of life etc. This was compared with the national benefits in terms of export earnings, tax revenues, employment for construction and operation etc. Thus though the lay objectors' evidence was accepted as relevant it was inevitably ineffective. It is inevitable that a large development, such as the one proposed, will drastically change the environment, wherever it is constructed.
- (2) Environmental - Are the sites physically suitable? Is there adequate infrastructure? What effects will the development have on the environment? The evidence of the applicants, and

the consultants was accepted as factual on this topic. The lay objectors were unable to challenge their facts.

- (3) Technological - Can the development be constructed and operated to an acceptable level of safety?

Facts on this topic constitute the bulk of the findings of fact and again the evidence comes from the applicants and the consultants and not from the objectors. Under cross-examination the expert witnesses convinced the Reporter that the plant could be designed and built to an acceptable level of risk and the objectors were unable to find flaws in this evidence, even though their advocate was responsible for much of their cross-examination on the highly technical design details of the plant.

Thus much of the evidence of the lay objectors was irrelevant, and where it was relevant it was ineffective. Either their evidence on 'relevant' topics was "non-factual" or their cross-examination on relevant topics, though it may have tested the evidence of the applicants and consultants, did not challenge its "factual" status.

It is clear from this analysis of "relevance" that both the Reporter and the lawyers at the inquiry shared the same criteria, e.g. the objectors' advocate, employed only part-time because the Action Group had limited funds, concentrated on trying to challenge the technical evidence of the applicants because he knew that this was the most important topic of the inquiry. i.e. if he could suggest that the plant could not be built safely, and this was accepted as factual by the Reporter, this would at least delay the construction of the plant

until the appropriate safety standards could be met. The close fit between the applicants' evidence and the Reporter's findings of fact can be largely attributed to the professional advice and assistance on the presentation of their case to the applicants by the senior advocates whom they retained. Similarly the precise and concise cross-examination conducted by these lawyers demonstrated that they shared the same criteria for ascribing relevance and facticity as the Reporter. In the following chapter, I describe what counts as "a fact" in the inquiry and thus describe the "professional frame of reference" in more detail.

It is clear, however, that this frame of reference is not shared by the lay objectors nor is it made publicly available to them during the inquiry. The objectors' evidence contains more irrelevance than relevance, as does their cross-examination. I examine the different "frame of reference" which is reproduced in their participation in Chapter 7.

The technical-rational function of a public local inquiry is to collect relevant facts. I have argued in this chapter that there are no public criteria which describe what counts as "relevant". However the Reporter conducts the inquiry with a set of criteria for ascribing "relevance". These form part of the "professional frame of reference" which he shares with the lawyers and most of the expert witnesses in the inquiry.

By examining the Reporter's conduct during the course of the inquiry and by comparing the "Findings of Fact" with the summary of evidence, I have reconstructed the main criteria for ascribing

relevance, these I have described as economic, environmental and technological. From a starting assumption of overwhelming economic need, the object of the inquiry is to ensure that the proposed designs pose an "acceptable" degree of risk and have an "acceptable" impact on the environment.

Evidence on these issues will be relevant but its inclusion in the Findings of Fact, which I have argued is the crucial achievement for success in the inquiry (in technical rational terms), depends on whether it adequately fulfills the criteria of "facticity" i.e. what counts as a fact for the purposes of the inquiry, which I analyse in Chapter 6.

I argue that the technical rational collection of relevant facts is the bureaucratic duty of the Reporter. For him it is what the inquiry is "really" about, it is his most important function in tension with his duty to encourage lay participation. However for the lay objectors, as I show in Chapter 7, the collection of information is only one role of the inquiry process. They do not share the precise "professional frame of reference" and do not therefore award the inquiry process legitimacy on technical-rational grounds. For them the inquiry is also about justice, morality and responsibility. I argued in Chapter 4 that these rhetorical notions are reproduced in the inquiry in the sympathetic characteristics of the Reporter i.e. in his "democratic" role rather than his "bureaucratic" role.

CHAPTER 6

The Reporter 3 - the criteria of 'Facticity'

In Chapter 5, I looked at the Reporter's findings of "fact". I argued that since the findings of 'fact' are the evidence on which a decision is made, it is crucial for a group of participants to have their evidence included in the findings. This would be one measure of successful participation; an index of the ability of a party to exercise power. I have discussed the criteria used by the Reporter to ascribe relevance to evidence. In this chapter I will go on to examine the criteria he uses to ascribe "facticity". Much of the objectors' evidence fell into the "relevant" categories of environmental, technological or economic, yet very little was included in the findings of fact. How does the Reporter decide what constitutes a fact?

I want to address this question by focussing on the treatment of one particular topic, hazard. The controversy over hazard is a good example of the Reporter's criteria for ascribing "facticity" to evidence for the purposes of the inquiry. Also, a high proportion of the evidence given in the inquiry falls into this category.

Having described the criteria used by the Reporter to decide what constitutes a relevant fact, I want to examine the extent to which these criteria are shared by the advocates and experts. I will argue that these three share an approach to the inquiry which I describe as a "professional frame of reference". This set of assumptions about what constitutes correct procedure and about what is relevant and factual, is reproduced in the actions of these participants and effectively constructs their participation in the inquiry.

Thus, following Giddens (Giddens 1976), I want to show how power, in this case manifested by dominant economic interests operating through a process of technical rational decision making within the framework of an interventionist democratic state, actually operates in the social practices of the inquiry. i.e. how authority is exercised.

In this chapter I will complete a description of the professional frame of reference which is predominantly technical rational but my general concern is not just to demonstrate that technical rationality dominates, but to show how it dominates. This will be done in chapter 7. I argue that technical rationality does not dominate either with the unambiguous consent of the objectors or through their absolute subjection to it. Domination operates through contradictions that are visible in the social practices of the inquiry; at the level of "the cultural milieu" (Willis 1977). The lay objectors both penetrate the dominant technical rational ideology and are limited by their allegiance to it, i.e. they put forward both a technical and a non-technical case. I show in the next chapter, how these contradictions operate. Thus I am concerned to show the relationship between the lay objectors and the dominant frame of reference. The following analysis of "facticity" in this chapter completes my analysis of the professional frame of reference.

The hazard controversy concerned the phenomena of "open flammable cloud explosions"; though there was even debate over this definition. Each group of participants seemed to agree that the most hazardous event at Braefoot Bay would be a spill, at the

loading lines, of the liquified, petroleum gases. (L.P.G. s i.e. propane, butane, gasolene or ethylene). these are refrigerated to very low temperatures to maintain them in a liquid state for easier movement. If a spillage occurs, the liquid immediately evaporates since the surroundings, at land or sea, are much warmer. This gas mixes with air to form a highly flammable mixture. A cloud of this air/gas mixture forms and moves with the wind. After a certain period of time, the cloud mixture reaches a point of maximum inflammability before the ratio of gas to air drops until the gas is dispersed into the atmosphere. Under certain conditions, if the cloud finds an ignition source, it can either burn or explode.

Where the participants disagreed was in the precise definitions within this general model e.g. - what size of spillage is required? How likely is a spill of this size? At what concentration does a cloud reach maximum inflammability? How will the cloud travel? How is its movement affected by ground/air/sea/weather etc. conditions?

The objectors advocate led the objectors' expert witness. The advocate's argument was that since so little was known about the behaviour of these open vapour clouds, the possibility of the spillage of ethylene presented an unacceptable risk to the community under the plans at that time put forward by the applicants. The witness had already submitted a written precognition so his examination can be seen as the advocate's attempt to select and present those parts of his evidence which he would most impress the Reporter.

The advocate firstly established that the witness thought there

was a significant risk of deaths and damage from an open flammable cloud fire. This was not because of an inadequate standard of safety disclosed by the applicants' plans, but because there was insufficient information to judge the standard of safety. After referring to warnings given in previous years by the witness about the danger of L.P.G. s and the need for further research into the behaviour of vapour clouds, the advocate further established that since a serious disaster in 1968, little more work had been done which gave any more understanding of how these explosions can occur.

There followed a long piece of evidence by the witness explaining why his calculations differed from those of Cremer and Warner, the independent advisors, and further justifying his decision to depart from various similar models of vapour cloud behaviour and to accept different assumed constants within these models. The advocate's intention here was to bring out the link between the lack of knowledge and data, and the sophisticated theoretical level of the conflict. His argument might be summarised as follows, "since there are few facts tested by experiment or experience; we have to rely on theoretical extrapolation for our information and that is why I am leading this witness's theoretical evidence, which tells us that more work needs to be done to provide more facts".

The witness then went on to describe the possible hazard. This would be a small spillage of ethylene which exploded close to a jetty releasing a vapour cloud which might drift outside the site

and find an ignition source in an area where there might be members of the public. This was followed by another technical discussion about flame acceleration which again showed the lack of knowledge about ethylene cloud behaviour, and a further discussion on the differences in the Cremer and Warner calculations which the witness considered not too significant since neither he nor Cremer and Warner,

".....would like to say that our predictions were accurate to more than a factor of 2."

Finally the advocate established through the witness that a spill of 30 tons of ethylene or propane, given "favourable" weather conditions, could cause an explosion at either of two points outside the site boundary which could cause loss of life.

At this point it is interesting to note certain omissions in the advocate's examination: e.g. he did not discuss the probabilities of events which might result in a spill other than to get from the witness that there was a "significant" risk. The witness insisted that he had said this because there was insufficient information about the detail of the plant to make a quantitative assessment of the hazard.

This is interesting because at the end of his cross-examination the witness was asked by the Reporter whether he thought that the plant could be designed and operated in a way which would meet his standards of safety. The witness asserted that this could be done as there were further safety features which could be built in.

(Though he later said, in a letter to the Reporter, that these safety features involved the use of new technology.)

This is an example of the partial presentation of evidence by advocates. In this instance the advocate wants to make the point that there is a risk and proceed quickly on to detailed discussions of the nature and extent of the potential damage. He represents the objectors, and so his interest is in having the development refused. In his estimation, in order to further this interest he must concentrate on the nature of the risk and play down the statistical likelihood of a serious accident.

To further his argument, the objectors' advocate then attempted to show that the disagreements between his witness and Cremer and Warner were not due to major differences in their assumptions or scientific method but to a lack of information and knowledge about the behaviour of vapour clouds.

"Well it isn't that we disagree but we realise that there is a lack of knowledge in this area." Witness for Cremer and Warner
(2427)

So the objectors' advocate did not argue that tested and proven evidence is not generally adequate. On the contrary, he maintained that in this case there was insufficient empirical evidence which resulted in academic, theoretical controversy. His conclusion was that the hazards were uncertain, and so the development should not be granted permission.

In effect he argued that in the absence of empirical evidence, other sorts of evidence constitute relevant knowledge. In this case the theoretical extrapolations of his witness were used to suggest links between existing facts and to explain inconsistencies and ambiguities in an explanatory scheme resulting from a lack of tested empirical evidence. The advocate was making a claim for knowledge based not on "facts", but on the "creative" use of theory and fact to interpret evidence and predict behaviour where there is little experimental evidence, though his main point was that there were insufficient facts to be able to guarantee an adequate level of safety.

I will examine some reasons for this approach by the objectors' advocate below after I have dealt with the cross-examination of the same witness by the advocates for the applicant companies.

In cross-examination, the first of these advocates (for Shell Expro) began by establishing that the witness had departed from his initial method and had inserted a different calculation of his own.
(1)
There was no justification in the original paper for this procedure. He continued to ask the witness to justify his assumptions and departures from established methods, without actually challenging these methods. He was attempting to suggest that the extrapolations made by the witness were both different from the work done by other scientists and entirely theoretical, i.e. untested by experiment.

The cross-examination continued to argue that the risk of a spill depended on a detailed hazard and operability audit which

(1) i.e. different from that used by Cremer and Warner, the independent consultants.

could be completed when the detailed designs were submitted. The advocate also led the witness to assert that refrigerated storage was in many important ways safer than high pressure storage.

The advocate for Esso Chemicals began his cross-examination with a series of questions designed to state the witness's position in an ironic way emphasising his reliance on hypotheses, i.e. that if a cloud forms in a certain position after an unlikely spillage, and conditions are right, it might travel to a certain place and, there explode. Because of the witness's departures from other works the cloud is assumed to travel further
(2)
and create greater blast damage. He immediately followed this with,.....

Advocate : "I wonder if we could move
away from the theoretical
into the field of practice."

" : "Can you point to any spill
of ethylene on water which
has occurred and has resulted
in an explosion?"

" : "Can I take it from that, that
you can't point me to any other
spill of ethylene which has
resulted in an explosion."

" : "Well can you tell me any other
case where a pressure, leaving
aside ignition by T.N.T., of
30lb p.s.i has been measured
at the edge of an ethylene cloud?"

" : "You see, I just want to find out
how far this is established by

(2) Here the advocate is implying that this expert is something of a maverick in being out of step with other experts in the area. This supports his argument that the witness's evidence is speculative and untested and thus not "factual" for the purposes of the inquiry.

experiment and how far it remains
in the field of theory.

Witness : "Well it is neither established by
experiment nor to my knowledge
is established by actual incidents
that have taken place. It is
entirely a theoretical structure
based on the knowledge that I have
of the difference between ethylene
and propane."

This cross-examination presents an entirely different version
of this witnesses evidence from the version presented by the
objectors' advocate. The aim is to suggest that the evidence
presented by the witness as knowledge, consists of theoretical
speculation and not "facts" tested by experiment or experience, and
as such is irrelevant. This supports the arguments of their
clients, firstly that a hazard and operability audit will minimise
the risk of an accident and secondly that this confidence is
supported by the existing "facts" about the companies' safety record
and about the behaviour of liquid petroleum gases.

I want to draw two points from the analysis so far.

Firstly the analysis demonstrates the way in which knowledge is
constructed in the inquiry. The careful selection of evidence and
questions in their examination and cross-examination conducted by the
advocates, is not designed to produce some sort of "neutral" truth, it
is designed to produce "facts" which will support their clients' case
and cast doubt on that of their opponents.

"It is thought that the lawyer, because he
deals in facts, should be concerned with the
discovery of truth. He is not. He is only

concerned that the right conclusion is reached on the facts before the court. These conclusions are reached on the evidence which is available, which sometimes has nothing to do with the truth at all."
(Du Cann 1979 p20)

This comment concerns courts but applies equally to public inquiries. Lawyers present evidence which fits with the Reporter's definition of a "relevant fact" and which will favour the argument they want to make in favour of their client. Recent work in the philosophy of science argues that knowledge is the product of certain theoretical, methodological and value assumptions. The categories (3) 'true' and 'false' are internal to particular claims for knowledge, rather than absolute terms. Thus the Reporter might first ask of particular evidence, "is this evidence a candidate for the categories true or false", and then decide whether it is true or false according to the criteria within his frame of reference. In the same way the criteria of "facticity" can be further split. Is the evidence a candidate for facticity, i.e. is it the sort of information which can be true or false then is it or is it not a fact? There is an implication in the last sentence of the example above that truth is an absolute category to which legal procedures do not necessarily approximate. I argue that knowledge is always a product of particular social practices and we cannot design procedures for establishing "absolute truth" because there is no neutral method nor neutral language.

I will specify more clearly below what are the criteria for ascribing "facticity" in the dominant frame of reference. For the

(3) See Giddens 1976 Chapter 4 also Khun 1970 Lakatos and Musgrave 1970 Feyerabend 1975 Barnes 1974 Hollis and Lukes 1982.

moment I want to argue that the category of "relevant fact" in the inquiry is not equivalent to that of absolute truth. This is the rhetorical claim. The inquiry is supposed to be impartial, the attribution of facticity is commonly assumed to be a neutral activity just as science is held to be value-free. The "facts" of the inquiry have to be presented as the truth, or to use a more sophisticated conceptual analysis, the public, in this case primarily the objectors, must be persuaded that the information has been gathered fairly and openly. Thus I argue that this is another requirement for legitimation. However because the "Findings of Fact" are not produced until the end of the inquiry, and because it would be virtually impossible for an inexperienced objector to find out during the course of the inquiry what were the dominant criteria of relevance and facticity, these issues are less crucial for legitimation than the manner in which the Reporter directs lay participation, (see chapter 4).

The second point is that although the advocates are putting forward different arguments and have the opposite interests, they share (with each other and with the Reporter) the same basic assumption as regards what constitutes relevant knowledge and what constitutes a "fact". They all agree that evidence tested by experiment or experience, i.e. proven "fact" will be accepted by the Reporter and that anything else is second best and will not be likely to be included in the findings of "fact". The basic argument of the applicants' advocates is that an acceptable level of risk can be guaranteed by a hazard and operability audit and that in any case the available "facts" (evidence tested by experiment or experience) do not suggest the possibility of a disaster. The objectors' advocate

skips over the hazard audit and the statistical chances of hazard and asserts that since there are so few "facts" known about the behaviour of these clouds, no level of safety can be guaranteed and so the development ought to be moved. Shell/Esso say - the facts say it is safe, the objectors say - there are not enough facts. All the advocates realise the importance of facts to the Reporter and construct their cases accordingly.

Findings of Fact

I now want to look at the Reporter's treatment of this controversy. How much of this was included in the findings of "fact"?

He decided that none of the controversy over the detailed behaviour of vapour clouds counted as "fact". He summarized, in very general terms, what a vapour cloud was, how it formed, and how it might behave, then, with regard to the movement and the explosive potential of the cloud, over which most of the discussion was, he said,

"Parties differ on what over-pressure should be assumed at the edge of an exploding ethylene cloud. No experiments involving a large scale spill of ethylene have been carried out."

The Reporter went on to say, that there had been numerous incidents around the world involving L.P.G. storage but that the root cause of disasters is frequently failure to identify the full range of hazard inherent in an operation and to this end a full

hazard and operability audit should be carried out.

During the period of the inquiry when vapour cloud behaviour was being examined, the Reporter asked the objector's expert witness and Cremer and Warner to meet and compare their work so that they could "agree to disagree" when giving evidence at the inquiry. This was to allow the Reporter to be able to make more direct comparisons and see exactly where the points of difference lay so that he could assess any claims that they might be included in the findings of fact. At the end of the inquiry, the Reporter merely categorised this as academic theoretical dispute and as such, not factual.

Thus the Reporter only ascribed facticity to evidence which had been tested either by experiment or by experience. Scientific theories which used hypotheses to link particular pieces of factual information did not appear in the findings of fact.

Before going on to discuss certain implications of the definitions used by the Reporter, I want to give one more example of the precise and rigid boundaries of relevance and facticity common to the Reporter and the advocates. This example deals with the evidence and cross-examination of an "expert" witness for the Conservation Society.

This witness asserted that since the recent disasters at Qatar and at Flixborough, it had to be accepted that

"even the best laid plans could go wrong."

He maintained that the problem required new thinking and that he had seen no evidence of this in the applicants' proposals. His evidence took the form of various suggestions as to how the safety of the proposed developments might be increased, e.g. the arrangement of the plant should be changed from a matrix formation to a long "necklace of beads" layout, (this would isolate each process or storage unit and prevent the spread of a disaster), there should be automatic fire-fighting equipment using liquid nitrogen and not water, and there should be fully redundant secondary containment for pipes and storage tanks. His conclusion was that since there was no 100% safe solution for the handling of L.P.G.s at sea, the development should be sited in a more remote area. Under the assumption that the developments at Qatar and Flixborough were designed and operated to the highest standards of safety, it must be concluded that since both plants suffered disasters then present scientific knowledge is inadequate and that new thinking and new technology is required to improve safety. Thus though this witness supported a hazard and operability audit, he insisted that this in itself was insufficient.

His own new thoughts, which he admitted were only intended as guidelines for others to pursue more rigorous inquiries were all theoretical constructs and extrapolations. None of the procedures had been empirically tested, necessary equipment and machinery had not been designed and there were some suggestions which were impractical even before they had reached the drawing board. However, as consultant for the conservation society and not for the applicants, he was under no obligation to provide detailed technical designs. His aim was to show the sorts of direction that further

research might take to raise the safety to an acceptable level.

In cross-examination the objectors' advocate selected several of this witness's statements to construct an argument which would support his client's case. He established that the lack of proposals for secondary containment of spillages and the novel technology that such proposals would require, meant that the Braefoot development could not be made 100% safe and therefore ought to be refused planning permission.

Earlier in the inquiry this advocate made the comment,

"There is probably little in Mr. X's report that I consider assists the line that the Action Group will be taking at the inquiry."

We can now see "little" means his assertion that since there was no 100% safe solution to the problem of handling L.P.G.'s, the development ought to be moved to a more remote location. The advocate used those parts of the witness's evidence which supported his case. i.e. his fears about safety, but ignored the rest of his evidence i.e. the theoretical speculations on how to improve safety. Essentially this witness's argument was similar to that of the objectors advocate: there have been too many accidents in developments of this type for us to allow them to be built near residential areas unless much more research is done and new technology developed. The advocate did not use the witness's evidence on what sort of research and technology ought to be pursued. He treated this witness's evidence in much the same way as that of his own expert witness. He used their evidence to argue

that there were not enough facts known about key areas of this development and that therefore it should not proceed until more facts were available. For him, an absence of facts leads to theoretical disagreements which form insufficient grounds for calculating how safe the development can be expected to be.

I want to compare this treatment of the witness with his cross-examination by the Shelly/Esso advocates. During this, I felt the atmosphere at the inquiry was less than serious. The tone of many of the questions suggested a kind of ironic disbelief, as if the questioners were amazed that this witness had the nerve to present such evidence. There was much amusement from the Shell/Esso and District Council benches at the wit of the applicants' counsel. Even the witness himself, who had encountered at least one of the applicants' advocates before in a similar inquiry, gave the occasional wry smile, as if he had expected his evidence to be treated flippantly.

The Shell advocate established that, contrary to the witness's evidence, there was fully redundant secondary containment planned (4) for the Shell storage tanks. He also secured from the witness the information that his plan for using nitrogen spray might split a ship's hull and thus cause more spillage; exactly what he was trying to prevent.

The Esso advocate began by establishing that the witness'

(4) This means that if the first container burst, the second container had the capacity to retain the full contents of the first container.

evidence on noise was a purely subjective statement made without any testing or proven empirical evidence to substantiate it. He pointed out several factual errors in the evidence, but most of his questioning concentrated on the impracticality of the witness's evidence; e.g. large quantities of nitrogen would need to be stored round each item of plant, maintenance of underground tanks would be very difficult, the notion of a long process line from St. Fergus to Moss Moran with an ethylene cracker on a branch line in Arbroath seemed ridiculous, the fact that neither his "necklace of beads" layout nor his 2 mile ariel pipeline to a floating harbour; have ever been used before, far less been empirically tested. The advocate finally established that the witness himself was not happy with the practicality of his schemes, though the witness had not intended the schemes to be practical but to be speculative suggestions requiring further development. In particular the advocate's questions on the 2 mile ariel pipeline into the Forth and the "branchline" to Arbroath were heavily ironical and caused amusement throughout the inquiry.

Again these advocates were concerned to show the absence of facts tested in experience or experiment in this witness's evidence. Despite the witness's assertion that he was only suggesting future avenues for research and not presenting a fully tested alternative design, the applicants' advocates subjected his evidence to rigorous tests of 'facticity'. The object of the cross-examination was to demonstrate that the evidence was not only inconsistent, factually inaccurate, and full of holes but also theoretical, and unsubstantiated by any research, testing or experience. The advocates knew that this evidence was not what the Reporter wanted

and displayed this by the use of ironical questioning. The example demonstrates that the advocates share the same definition of "fact" and operate using this same definition despite representing clients whose interests are opposed. The interests of their clients are best served by ensuring that the Reporter's interests are secured.

None of this witness's evidence appears in the findings of 'fact'. Though the topics covered by his evidence, i.e. the technical design and operation of plant, are relevant enough, his evidence does not conform to the criteria of facticity used by the Reporter. As we have seen, the Reporter excluded almost all the evidence on hazard and on how to make the development safer, on the grounds that the evidence consisted not of "facts" but untested theoretical speculation or opinion. The Reporter preferred to rely on a hazard and operability audit to ensure an adequate level of safety was reached for the plant.

This audit consists in an examination of the design and construction of each item of plant and equipment, starting from one end of the process and working through to the other. Failure of each item is postulated, and the consequences of this failure are followed to other parts of the process and so on. This is often known as a "detailed fault tree analysis. The object is to isolate all possible breakdowns and then design preventative devices into the process so that all hazards are provided for. This, according to Shell/Esso experts and according to general expert opinion, reduces the risks of catastrophe to an acceptable level.

In effect, this means designing into each system the accumulated empirical evidence about each piece of equipment, in order to improve the safety. One would expect this to be done with any piece of remotely hazardous industrial equipment. One would also expect that it had been done on several plants which have since failed disastrously. Since the Reporter is only concerned with evidence tested by experiment or experience, the highest standard of safety he is likely to get is that the industry keeps up with the latest accident. E.g. in this inquiry, the Reporter recommended fully redundant secondary containment for the storage tanks after accidents at Qatar and Flixborough caused by failure of tanks without this safeguard. The argument put forward by the Action group advocate is that the rate of accidents suggests we don't know enough facts - therefore a fault-tree analysis is not sufficient by itself, and development should therefore not be permitted in residential areas.

The objectors' expert witness argued that the "facts" alone were inadequate to ensure safety, and that until more research was carried out, speculative theory should be used to gauge the possible behaviour of vapour clouds and allow for this in the design and siting of the plant. The conservation society witness felt that too many accidents had occurred despite the safety precautions built in to designs and that therefore new thinking and imagination was required to bring these developments to a reasonable safety standard.

The latter witnesses would probably not consider their evidence strictly factual, by the rigorous standards applied by the Reporter.

However they would claim their evidence was relevant knowledge, as would other parties whose evidence was excluded from the findings of fact.

The Reporter is concerned only with factual evidence. Evidence is factual if it has been adequately tested either by experience or experiment. He does not accept that there are insufficient facts, as a cursory look at his "Findings of Fact" will show. Previous accidents in the industry are relevant but only in so far as mistakes, design faults and technical problems can be isolated and remedied, thus making each new development safer. The Reporter is concerned with ensuring that it can be built with an acceptable degree of risk but this is to be calculated on evidence which has been tested by experience or experiment and not by theoretical speculation or untested extrapolation.

(5)

The Reporter describes himself as a

"seeker after truth".

I would argue that this carries absolutist implications. However from my analysis in this Chapter I would also argue that the notion of "relevant facts" is the product of a particular set of methods and assumption drawn from the Reporter's training, experience and professional knowledge of his powers, duties and responsibilities. Thus "truth" is not absolute - it is the product of a professional frame of reference. It is "truth" for technical

- (5) My concern here is not with the relationship between "economic requirements" and "safety regulations" though the issue is clearly raised here. For a recent study of precisely this problem see Carson (1981).

rational purposes which is presented rhetorically as absolute and neutral. Before going on to consider the implications of this, I want to look briefly at other grounds used by the Reporter to reject evidence as non-factual.

I showed in Chapter 4 that much evidence was excluded from the findings of fact, not on the grounds of substantive irrelevance, but because the evidence was not "factual". This evidence included such categories as judgement, opinion, policy, reaction to facts or personal feelings.

In this example the objector has presented to the witness the argument that potentially hazardous developments ought to be situated away from populated areas.

Witness: I am aware of that, but I don't regard this as being relevant to my part of the job. I am not involved in establishing the location for petrochemical plants.

Objector: I appreciate that. You might have a personal view on it do you?

Witness: My personal view is that where you can possibly provide yourself with room space (sic) from populated parts, from habitation, where you can provide it you do so. But I know that this situation is not always there. You may be forced to put your installation in a much less limited space than what you would desire to.

Objector: And thereby increase the risk of a disaster?

Witness: I should not say that. I should say and therefore having to look extra cautiously at all the design features.

Objector: But you are always looking extra cautiously at the designs aren't you?

Witness: That is really to a certain extent where you in one case provide yourself with one line of defence, and then you provide yourself with two lines of defence, and being accused of spending too much money.

Objector: If a community is at risk surely a company of the size of Shell could spend a little bit more money and take it somewhere else?

Witness: Well this is not.....

Objector: It is not a decision for you to make, I can appreciate that?

Witness: It is not a decision for me to make and in that respect I am not taking part in it.

Objector: Which comes first money or human life? I wouldn't have thought you would have needed to wait to answer that?

Witness: I should say what comes first is quality of human life, which may mean in certain cases that a certain amount of risk has to be accepted by the community to be prospering and I think that if we were not there doing anything our country, the countries we live in, would not have the same quality of life we have now.

Objector: Well I appreciate that if I get into my car to drive, the benefit I get is that I get here in comfort and quickly, but if I set up my house in Aberdour and along comes Shell and sets up a petro-chemical complex, I didn't ask for it, I don't want it, it is no benefit to me, is that not a justifiable way of looking?

Witness: May I refuse, Mr. Reporter, to answer this sort of question?

Reporter: I think you have got more cooperation out of this witness than perhaps you expected. Thank you.

This is an example of a common line of questioning by the lay objectors which I will discuss in Chapter 7. This does not produce evidence which the Reporter will consider "factual". The objector asks for the witness's personal opinion, the Reporter would be concerned with his professional evidence, he asks moral and political questions which are similarly irrelevant. I suspect that if the witness had not shown himself willing to answer the questions the Reporter would have interrupted the questioner. This example occurred quite early in the inquiry and thus the Reporter was probably keen to allow the objectors some "leeway". The witness was the general policy witness for Shell and not a technical expert. It could be argued that part of his role in the inquiry was to face public criticism of general company policy. This is a further example of the Reporter extending "democracy" by allowing objectors to participate though their contribution was of no assistance to his bureaucratic function of information gathering. Later, more experienced witnesses refused to answer questions asking for their

personal opinion. (see Chapter 7)

Objector: Beware gentlemen! No doubt you have been paid a large sum of money to give professional advice to your clients, so that what you are giving us here today is your professional opinion?

Witness: Yes.

Objector: If we have heard your professional opinion, is there anything in your private conscience that worries you about this development?

Reporter: In case you are wondering who to talk to at the moment, it doesn't trouble me if it is your professional or your private opinion: have you got any reservations or do you see any areas where real difficulty or damage could arise at this development? I think we will probably get the same answer put that way as put the other way?

Here, the Reporter again tries to move the inquiry away from questions of moral opinions to facts, "real difficulty or damage". The Reporter's final comment suggests that he is aware that the witness is experienced and will not respond to questions concerning his "private conscience". However at the same time he attempts to get a response to keep the objector happy, and to prevent him from feeling that his moral concerns are not being treated seriously. One could read the objector's question as a "partial penetration" (Willis 1977) of the dominant technical/rational mode of the inquiry. He is implying

a disjunction between his notion of justice and the technicality and professionalism of the inquiry. He is, in the broadest sense, recognizing that the inquiry is political. He wants the inquiry to debate values rather than test facts. I have more to say on the moral basis of lay participation in Chapter 7.

The dominant frame of reference

I have argued that the "findings of fact" are a more significant part of the final report than the summary of evidence. The Reporter organises the evidence according to relevant issues and selects certain evidence as being "the facts of the inquiry". It is these 'facts' which justify a particular decision. It is not that the Reporter prejudges the final outcome of the inquiry, but he has some questions to which he requires answers and thus concentrates on particular issues (relevance) and only a certain kind of evidence on these issues (facticity). This is precisely his bureaucratic function as Reporter. This is not, however, publicly available in the inquiry. During the inquiry evidence is given by witnesses rather than according to issues. The Reporter gives hints as to his aims and methods but never an explicit formulation of his bureaucratic role. Nor does he summarise his findings as he proceeds, these are only available in the Report published after the end of the inquiry.

There was, however, one witness at the inquiry who, as it were, gave a "sneak preview" of the final Report.

The planning witness for the two applicant companies, clearly demonstrated a close familiarity with the dominant frame of

reference. His evidence was not factual and thus was not in the findings of fact but was significant in the inquiry for two main reasons.

His evidence came at the end of the applicants' case and it consisted of a summary of good planning arguments for the approval of the development based on the factual evidence provided by the applicants' witnesses who had preceded him. In other words he performed the same tasks of selection, assessment and judgement as the Reporter. His evidence is in content and arrangement very similar to the Reporter's final Report. Though not "factual", his evidence demonstrates that the applicant's evidence was designed to provide the factual basis for a planning argument based on the same criteria applied by the Reporter.

This witness was very experienced in public inquiry work and presented himself impressively in the witness box as calm, quietly confident and relaxed. His arguments sounded convincing and he dealt with hostile cross-examination with a mixture of charm and authority. Coming at the end of the applicants case, he presented what sounded like extremely good arguments for approving the development. This is not just my opinion but was shared by many of the participants at the inquiry including a large number of objectors, some of whom felt that their case was hopeless, after the evidence of this witness.

Though the applicants began their evidence with a general policy witness whose evidence attracted some emotional cross-examination from the objectors, the interim evidence had been

specialised, and technical and concerned specific parts of the development. The presentation of the evidence of the planning witness was the first time that the case for the development had been argued in detail. It had a demoralising effect on the lay objectors.

This witness's evidence reproduces important parts of the dominant frame of reference, and for this reason is powerful. there are no explicit references to the criteria of "relevance" or "facticity" or to the political assumptions which constitute good planning arguments. The argument for the development is presented as obvious and inevitable. His argument suggests that given the facts i.e. the great economic need for the development, the suitability of the site, the acceptability of the risk levels and the commitment to minimise environmental damage then any rational man would give approval to the development. The decision is a rational one based on technical information. Government policy is technical information a "fact" for the purposes of the inquiry and not a matter for discussion.

From my conversation with the objectors at this stage of the inquiry I would argue that this evidence demoralised the objectors because for the first time they heard the full technical rational case for approving the planning application and they were both convinced that it was a strong argument and dismayed that their work in the inquiry didn't seem to be represented and didn't seem to have counted.

This provides further support for my arguments in the next

chapter about the significance of the relationship between the objectors and the dominant technical rationality of the inquiry.

The Professional Frame of Reference

I have argued in this chapter and the previous chapter that the criteria for ascribing "relevance" and "facticity" to evidence are the central constituents of a "professional frame of reference" which is shared by the Reporter, and the lawyers (and the witnesses) but which is not publicly available to the lay objectors.

Evidence in the areas of economic need, technological design and environmental impact is considered relevant and within these areas evidence which has been tested by experience or experiment is considered factual, as are statements of government policy. Given a policy decision that oil resources should be exploited, the technical rational problem becomes can this plant be constructed so that there is an acceptable level of risk to the community and an acceptable impact on the environment. As the Reporter said

"the balance sheet that I will be drawing up (is) whether the overall benefit and disadvantage to the community is one that says they (Shell/Esso) shouldn't come here at all."

The Reporter's function is to collect "relevant facts" on which a sort of cost-benefit analysis can be conducted. I have argued that he is interested in a limited sort of information which excludes expert knowledge where that is speculative or "pure" theory as well as other sorts of information which he is presented with

such as opinion, value judgements and personal feelings.

This part of the "professional frame of reference" consists of the bureaucratic function of the inquiry, the criteria by which information is selected out of the evidence presented. The other part of the "professional frame of reference" which I analysed in Chapter 4, I described as the democratic role of the Reporter. I argued that he fulfilled his responsibility of encouraging lay participation through the helpful and sympathetic attitude he adopted towards the objectors. This part of the professional frame of reference is not so important for the lawyers because they play a much less important part in controlling the inquiry and have no direct responsibility to make participation easier for lay objectors. I would argue, however, that in a number of minor ways they shared the "democratic" element of the professional frame of reference. Their own interests were served by tolerating lay participants and by not objecting to their "wayward" questioning. They had a responsibility to their clients for public relations, a responsibility to uphold the rhetoric of justice, fairness and impartiality and their interests would be further served by assisting the Reporter rather than by hindering him. So though the Reporter was largely responsible for balancing his bureaucratic and democratic functions, his sense of balance was largely shared by the lawyers in the inquiry. It is through this "professional frame of reference" that the Reporter controls and directs the inquiry. His bureaucratic fact finding role takes priority over the assistance and encouragement of lay participation but I argue that the two are inextricably interlinked. It is not that the inquiry is simply technical rational and that lay participation is a sham. I argue

that the objectors did participate in the inquiry and in a particular way, which I describe in the next chapter, awarded the inquiry legitimacy. It is for understanding how this operated that it is important to see how the bureaucratic and democratic roles were actually put into practice; how they remained in tension within the professional frame of reference.

This "frame of reference" reproduced by the Reporter and the lawyers, is not simply a product of the shared knowledge or the 'professional ethos' of the legal profession, although this culture is a very important medium for its dissemination. It is beyond the scope of this current study to trace the precise structural sources of the ideologies contained in their frame of reference, but one obvious source is planning law, and another the political practice of "planning". This raises questions about the relationships between law, politics and technological innovation to which this study contributes in a particular way.

I am concerned with the political role of the inquiry in legitimating state action and thus with the perceptions of the lay objectors of what might constitute "good planning arguments" rather than with examining what constitutes the latter from a legal or bureaucratic point of view. However, in McAuslan's terms (McAuslan 1979), planning law has tended to concern itself with

"facilitating the carrying out of policy and decisions on land use by public officials, and with maintaining the existing state of property relations in society, and the existing allocation of social resources."

The law is not neutral but serves conservative political objectives, conserving the existing controlling institutions and social relations. For McAuslan lay participation is subservient to the ideology of public interest. Rather than participation in inquiries being a citizenship right, it is formally based on property rights and is controlled by the discretion invested in public officials "to determine the nature, scope and effectiveness of lay participation". (McAuslan 1979)

"Public interest" in the Moss Moran case is defined by Government policy on the exploitation of oil resources and by certain technical measurements of risk and environmental impact. Lay participation has very little impact on these technical rational issues. I argue that the inquiry system itself and particularly the Reporter's discretionary power

"determine the nature, scope and effectiveness of lay participation"

In the next chapter I want to describe how the lay objectors participated in the Moss Moran inquiry. I show that contrary to McAuslan's argument, their participation was meaningful to them. I want to show how technical rationality dominates with the consent of the lay objectors in other words how legitimation is secured in the social practices of the Moss Moran inquiry.

CHAPTER 7

The Lay Participants

One of the main aims of changes to inquiry procedure rules was, ostensibly, to provide an improved facility for lay participation in the inquiry. I have argued in Chapter 1 that most of the changes applied to pre-and post-inquiry procedures e.g. the advance circulation of written precognitions of evidence, the pre-inquiry procedure meeting and the circulation of new-evidence, submitted after the inquiry has closed, to all participants. Some of these have undoubtedly aided lay objectors, but only in as much as the changes have made the inquiry more efficient, in terms of time and resources, for all parties concerned.

Procedures during the inquiry have remained largely unaffected by these changes. They are left to the discretion of the Reporter. I have described how the adversary procedures of the courtroom were adopted into the inquiry and how they continue to form the basic structural procedures of the inquiry. Circular 14 suggests that the Reporter should encourage

"the maximum informality of procedure so that the ordinary interested person does not feel inhibited from making a contribution without personal representation."

My argument in Chapters 4, 5 and 6 has been that the Reporter the lawyers and the experts share a tacit frame of reference which is reproduced in their actions in the inquiry. This frame of reference crucially supplies those criteria by which evidence can be labelled "relevant" and "factual" and also contains the methods and techniques of examination and cross-examination within the adversary procedure. In other words this frame of reference describes the underlying formal

structures of the inquiry.

The emphasis, in this frame of reference, is on collecting certain sorts of information efficiently. I have described this as the bureaucratic function. The encouragement of lay participation, the democratic function, takes a lower priority. Though the inquiry may allow some relaxations in the adversary procedures which would not be tolerated in a court of law, it is nevertheless tightly structured in a particular manner.

It is against this background that I turn to examine the participation of the lay objectors in the inquiry in more detail. What sort of frame of reference underpinned their participation? To what extent, if at all, did they share the dominant professional frame of reference? To what extent did their participation change during the course of the inquiry?

I expected to find a relatively precise professional frame of reference. For the Reporter, the lawyers and to a lesser extent the expert witnesses, the inquiry is part of their job, for which they have been trained. The inquiry is a part of the broader legal system within which the advocates work every day. The sociological literature on bureaucracy and the professions would lead us to expect a tightly organised "way of doing things" in the inquiry.⁽¹⁾ The professional frame of reference produces a particular sort of knowledge from the inquiry.

(1) See Salaman (1981).

The lay objectors are more problematic. The Action Group members share a desire to stop the development, but their motives, strategies and expectations might vary widely. However the knowledge they attempt to produce in the inquiry through either evidence or cross-examination, is produced in response to certain interests. In other words, they must have some "method" of participation in the inquiry, even if this is full of contradictions. Their actions in the inquiry do not appear spontaneously in the course of the inquiry but reproduce certain ideological structures; particular ways of looking at the world, for example views of how democracy works, of the function of the public inquiry, of the relative moral status of an expert, a Regional Councilor and an oil company executive, etc.

In this chapter I analyse their evidence and cross-examination to discover what sort of frame of reference underpinned their participation.

The Lay Objectors

Around ten 'lay objectors' participated regularly in the inquiry, sometimes conducting cross-examination on their own behalf, sometimes on behalf of the Action Group. The interests, abilities and knowledge of these ten varied considerably but as a group they can be described as confident, articulate and middle-class.

In the early days of the inquiry, however, these objectors were obviously nervous and unsure of themselves. They were hesitant; they spoke in low voices, their questions were interspersed with long pauses, and they repeated themselves. By the end of the inquiry these

'faults' had almost disappeared as the objectors became more confident and more accustomed to the atmosphere of the inquiry. It was as if the objectors had 'learnt' how to behave in an inquiry.
(2)

At face value then, it might appear as if procedures had been kept sufficiently "informal" to allow the objectors to participate. And indeed the objectors expressed a degree of satisfaction with the inquiry and participated throughout the inquiry in an orderly manner. Although they continued to express dissatisfaction and frustration I have argued (Chapter 3) that they can be said to have awarded legitimacy to the inquiry process because though they were sceptical before the inquiry started they persevered with their participation and did not abandon the inquiry.

In this chapter I want to look at these contradictions in more detail and provide an account of how legitimation operated in the social practices of the inquiry.

Lack of Resources

Before proceeding with this analysis I want to mention a number of practical problems which severely limited both the extent and the quality of the lay objectors' participation. These concern the unequal distribution of such resources as time, money and access to knowledge.

The inquiry was held during normal office hours. This meant that

- (2) For examples of how participants in a social setting construct and manage their identity see Goffman (1959) (1963) Berger and Luckman (1967).

those objectors with full-time jobs found it very hard to attend the inquiry regularly and their rota system led to a lack of continuity in their cross-examination and a great deal of repetition which was inevitable because one objector had not heard his colleague's cross-examination of a previous witness. This problem would have been eased, had the objectors bought a copy of the daily transcript but the cost of this was outside their limited resources. The cost of legal representation and an expert witness put a severe strain on even the relatively affluent communities represented by the Action Group. Being unable to buy much 'expert' and professional assistance, they had to do their own research, which involved the use of another scarce resource, time.

Though the oil companies would protest that the inquiry cost them a great deal of money, they provided themselves with whatever professional and technical assistance they required to present their case and there was very obviously a vast gap between their resources and the resources of the Action Group.

Some members of the Action Group claimed that they would have won their case if they had had access to the same resources as the applicant companies. This claim raises a number of crucial issues. e.g. What is meant by effective participation? Is this the same as "winning one's case"? Would the conduct or the result of this inquiry been different had there been no lay participation? Is 'effective' lay participation possible in public inquiries? What light does this study shed on the practical operations of democracy? I will discuss these issues in the final chapter, but I will show in this chapter, that the extension of democratic participation is much

more than a "resources problem"; that it is a complex political problem of a liberal- democratic state which requires the consent of the majority in order to govern. (see chapter 2)

Lay Participation

I have shown that the 'professionals' in the inquiry share a relatively precise 'frame of reference' which guides their participation in the inquiry. I now want to see what sort of 'frame of reference' the lay objectors use to guide their participation.

For the lay objectors in the Action Group, participation involved cross- examination, although a larger number of lay objectors gave a brief statement of evidence at the end of the inquiry. The objectors employed an advocate to conduct the detailed technical cross- examination of the oil companies' expert witnesses. Individual objectors usually added their own questions in cross-examination of most of the technical witnesses, the policy witnesses and the local authority witnesses without the aid of counsel.

Compared to professional cross-examination, lay cross-examination was imprecise, garrulous, wide-ranging and thus difficult to categorize. However, I have tried to produce some features of lay cross-examination which seem to me to best describe it.

Criticism

A great amount of the lay cross-examination seemed to be aimed at discrediting the witness in one way or another. This is a valid

and much-used technique in courtroom cross-examination. If doubt
(3)
can be cast on the credibility or reliability of a witness in a
trial, the judge (and or jury) might be less likely to accept his
evidence. Only exceptionally will this witness be giving 'expert'
evidence, and this technique is more frequently used to cast doubt
on a witness's memory of an incident. In the inquiry, the lay
objectors used this technique to challenge the sincerity, competence
and efficiency of the applicant companies and their employees.

A representative was asked whether he considered it good
business to sign contracts before being in a position to supply the
contracted goods. This is obviously a challenge to the
representative's commercial competence. There were many questions
accusing Shell of serving the interests of their shareholders rather
than, as Shell had claimed, the interests of the nation as a whole.
(The implication intended by the objectors was that these two
interests were always incompatible and that they, rather than the
oil companies, represented "the interests of the people".) There were
also questions about the detailed design of various pieces of plant,
the estimated life of the Brent oil field, negative tidal surges and
the consequences of ingesting fuel oil, which were asked to try to
catch the witness out; to show that the companies had not been as
thorough as they had suggested, to challenge their arithmetic, to
doubt their expertise: in general, questions designed to discredit
the witness. The questions may have concerned relevant topics,
however they were not part of a systematic testing of the evidence
but rather one-off challenges to perceived weaknesses. These

(3) McBarnett (1981) Du Cann (1979).

perceptions were usually inaccurate.

The objectors faced a formidable task in discrediting a company with the resources, reputation and record of Shell or Exxon, and it is not surprising that little evidence gleaned from this sort of cross-examination was incorporated into the final report. Most of this questioning was based on inadequate information and was an act of desperation rather than of calculation.

e.g. An objector asked a Shell witness about earlier plans for St. Fergus, the subject matter of the Peterhead inquiry in which Shell were not even involved. The same objector made some remarks in his questioning about the Peterhead inquiry, which were wrong. The Reporter intervened to correct him.

I would also place under this heading those attempts by the objectors to challenge rhetorical claims made by the applicant companies. e.g. An oil company witness would claim that

(Shell)..."would take a very serious view...."

of some topic, or that the use of a particular construction method would have

"a minimal effect on the environment"

The objectors would spend time demonstrating in cross-examination, that these claims were empty, ungrounded and meaningless.

However I have already shown that such claims did not come under the Reporter's criteria of "relevant fact" and so a challenge to these claims would not appear in the findings of fact, i.e. The Reporter was content to establish "the facts" and make his own judgements, leaving the evaluations of both sides as of minor importance.

In general the attempts by the lay objectors to criticise the company were unsuccessful either because they were inaccurate or irrelevant (in terms of the inquiry). The Reporter was concerned with the factuality of the evidence and was interested in cross-examination which challenged this. Much of the objector's cross-examination was designed to discredit the witness (and thus his employer) by attempting to find faults in isolated pieces of evidence. This is a useful technique in the criminal court when what is being tested is the witness's credibility.

In a criminal court, a witness's account of an event which was probably unexpected, happened very quickly and some months previously can be challenged on the grounds of the human fallibilities in perception and memory. Neither the integrity nor the status of the witness need be challenged.

However, in an inquiry, the point is to test the professional competence of a witness, e.g. is the design for the refrigerated pipeline competent and safe? If part of an expert's evidence was shown to be wrong, then this would discredit the rest of his evidence and would challenge his status as a competent professional. But this will be a difficult task which will involve a detailed technical knowledge of the field in question, rather than a taken

for granted, common-sense knowledge of the problems we have in reconstructing the events of a road accident.

Negotiation

Often in cross-examination, the objectors would seek assurances from a witness on some topic e.g. the risk to the community, the use of local labour, compensation etc. Some of these assurances were incorporated into the long list of planning conditions set out by the local authorities. In particular, the cross-examination of the Forth Yacht Clubs consisted of a process of negotiation to ensure the continuance of the annual Aberdour Regatta. Several witnesses were asked to give assurances that from their point of view they could see no reason why, with detailed consultation, the Regatta should not be able to go ahead. The Club's representative maintained a courteous and dignified attitude throughout the inquiry and used the inquiry as a forum for arbitration. He also participated as an individual and maintained his objection to the development regardless of assurances concerning the Regatta. This raises the question of whether the adversary procedure with its emphasis on conflict is formally suitable for the processes of negotiation and conciliation which go on in the inquiry.

It could be argued that for some of the lay objectors one of the main functions of the inquiry was the negotiation of conditions with the applicant companies. Thus the inquiry concerned the precise form of the development rather than whether or not the development should go ahead. As one objector said,

"we know the thing's inevitable so we just have to get what we can from the companies."

The adversary procedure sets two "sides" against each other - for and against the development. Though there is no doubt that most of the objectors were against the development, most of their "effective" participation, in terms of practical results, was in negotiating concessions, a particularly good example being the Regatta. The adversary procedure is not ideal for negotiation. It has to be done during cross-examination and thus with one witness, where it may concern an issue under the responsibility of three witnesses. Negotiation requires a dialogue and cross-examination limits the capacity of the questioner to make statements. However the adversary procedure is an effective way of collecting and testing information, the Reporter's primary function, and it might be that a seminar-type procedure which would be appropriate for negotiation, would be ineffective for the collection of information.

I would also argue that the use of the adversary procedure serves to secure legitimacy. Because it deals with witnesses rather than issues, it conceals the "issue-centred" nature of the inquiry from the layman, who only glimpses the underlying structures of the inquiry. The adversary procedure brings with it the ideological messages of "justice, fairness and equality" which reinforce the respect held by the lay objectors for the democratic process as they experience it in the inquiry.

The adversary procedure is an important part of the structure of the inquiry, it serves a variety of functions some of which may

assist lay participation, some which undoubtedly hinder it. In Chapter 8 I will look at proposed changes to inquiries, which would relegate adversary procedure to a small part of the process, in the light of this study of the Moss Moran inquiry.

Public Relations

There were occasions during the inquiry when the objectors seemed to be using their cross-examination as an occasion to attract public attention and public sympathy. The local and national press gave daily coverage of the inquiry, and the press table was usually occupied.

One objector in particular would appear, usually first thing in the morning, and attempt to secure headlines in the following day's press. On one occasion he put the 'curse of St. Columba' on the developers and on another suggested that each job created by the development would cost the taxpayer 1 million pounds and accused a local councillor of trading Fife's heritage for a short term economic gain.

This same questioner twice attempted to get an assurance from witnesses that they would accept the decision of the Reporter even if it disagreed with the final decision of the Secretary of State. In one instance, the witness was unaware of the correct administrative procedure, and the Reporter had to intervene with an explanation. This type of questioning certainly brought some light relief to the inquiry and the headlines may have boosted the morale of the objectors. It was, of course, irrelevant as far as

the Reporter was concerned, and it is perhaps worth noting that the advocates did not indulge in such behaviour, with the exception of the occasional joke.

All of the objectors at the inquiry maintained a courteous and calm front, tempers were rarely lost, there were no attempts to disrupt the inquiry, no ungentlemanly behaviour, few personal insults. The objectors seemed concerned to present themselves as decent, responsible, conscientious members of the community, perhaps thinking that the Reporter (being 'one of them') would be more likely to listen to sober evidence from sensible people, than to violent protestations from agitators. As demonstrated by John Tyme's
(4)
Highway Inquiries protests, it is possible to persuade middle-class conservative objectors to behave in a more violent and angry manner. It is significant that the Action Group did not choose this course, though they were aware of the possibilities.

Expertise

Those objectors who had some technical knowledge occasionally questioned the expert technical witnesses on some detailed technical point. This always appeared as a contest between amateur and professional. Usually the objector did not have sufficient knowledge and tried to use what little he had, together with his common sense to try to pick holes in the expert's evidence. This typically resulted in the expert explaining patiently to the amateur just where the latter's knowledge or experience was deficient. The

(4) See Sharman 1977.

objector's attitude in this case must have been hope that he would stumble on something that had been missed by the expert, or uncover a gap in his reasoning. I did not find one example, where an expert's evidence was substantively challenged by a lay objector. Experts spent a lot of the inquiry's time explaining their work to lay objectors. Again this can be seen as the inquiry securing legitimacy for the planning process. Lay objectors, particularly those with some expertise, are able to challenge directly the "experts". Thus when the experts "win", as they almost always do, lay objectors are more likely to accept their superior knowledge and skill because they have had a chance to "test" their evidence. Of course, even the layman with some expert knowledge is hardly on equal terms with an applicant's expert witness. He will have less time, money and research facilities, less specialised knowledge, less familiarity with his material and probably less confidence. Crucially the objectors did not know why they were asking particular questions. Whereas the advocates, in cross-examination, attempted to make a particular point which they knew the Reporter would think was relevant, the lay objectors even in these instances where they had expertise, tended to pursue critical arguments for their own sake. They did not share the same criteria for ascribing "relevance".

Though the lay objectors usually adopted the concepts and categories used by the lawyers and applicant companies, there were a few occasions when these definitions were challenged, where the objectors introduced alternative definitions of their own. In the first example below, the objector tries to establish a difference between the 'technical statement' of a fatal accident and its 'real

meaning' in terms of human suffering. The objector is trying to suggest that loss of life is an absolute value which should not be measured against economic benefits. It is a protest against the apparent glibness, which allows us to talk about death and employment prospects in the same breath. The witness, a senior Regional councillor, believes that jobs have always been paid for by suffering and disagrees with the witness's perceptions.

Objector: The technical statement doesn't mean anything to me and it wouldn't have meant anything to any of your Regional councillors?

Witness: I think there might have been the odd member who would have had a better understanding of it.

Objector: There was a recent pipeline incident in the Alaska pipeline. Now as I understand it in non-technical terms, it meant 1 man killed perhaps one family without a father, husband, five men injured, no indication yet as to how many of them will ever work again and yet in this technical report it would feature as "June, 1977, U.S.A." or "Alaska" wherever it happened "failure in pump, escape of contents, shutdown of pipeline" a technical statement which bears no relation whatsoever to the reality of one dead, five injured, goodness knows how many families affected..... Do you take my point that these are technical statements and mean nothing to the ordinary man in the street?

Witness: I fail to see the point that you are driving at. I mean, I have read, as you have, about the incident in Alaska but so far I don't know any of the detail and, like yourself, I regret the fact that people are killed not only in Alaska but in industry in this country every day.

Objector: So I take it you will not disagree that all the members of Fife Regional

Council were not aware in real terms, not technical statements, of the implications of these two pages before they voted?

Witness: I think that the Fife Regional Council have a measure of common-sense in their approach to such matters..... we have also got on occasion to give approval to the sinking of coal mines, we know..... people are ultimately unfortunately going to be killed.

Objector: You haven't answered my question were the Regional Council members aware in real terms of the consequences of this sort of incident? Was it itemised to them, the loss of life, maimed casualties, damage to property, was it described to them in non-technical terms at the meeting?

Witness: No, it was not described in non-technical terms..... could I just say this. this line of questioning is possibly fair at an inquiry of this nature but as someone who had the responsibility of being Chairman of the Seafield Disaster fund, of living through the Michael Colliery Disaster..... we are not unaware of the consequences of industrial development in our area.

Objector: Are you at risk as a result of this proposal by Shell/Esso?

Witness: I think it depends on your definition of risk.

Objector: Right I will define my risk, would you, if you had children attending Aberdour school, be worried that there may be an accident at Braefoot Bay which could result in the windows of Aberdour school being blown out at a time when all the children of Aberdour are in the playground that is what I consider risk. Are you at risk?

Witness: I think an emotive over emphasis.....

Reporter: Be fair, in answer to that question I think your answer must be not in that sense?

Witness: Not in that sense.

I have demonstrated the variation in the kinds of questions asked by the lay objectors. Some questions seemed to assume that the development was inevitable and thus sought to negotiate conditions, other questions were based on the argument that the development was an unacceptable risk and that it should be built elsewhere. Some questions accepted the definitions and concepts used by the lawyers and experts, other questions challenged these and offered alternatives. The objectors seemed to adopt a variety of approaches, not necessarily all logically compatible with each other. They tried to negotiate with the companies, they tried to discredit, embarrass and ridicule their witnesses and they attempted to mobilise public opinion in their favour. In Willis' terms (Willis 1977) some of the lay cross-examination penetrated the dominant technical rational conduct of the inquiry but their penetrations were limited by a residual commitment to the dominant paradigm and its institutional setting.

While it is possible to locate and describe the "frame of reference" which underpinned the participation of lawyers and experts in the inquiry, the sources of the objectors' participation seem to be of a different nature. Knowledge is produced in response to a set of interests. In other words, knowledge is socially produced by a set of methods and assumptions which have social structural origins. (see chapter 2) The lawyers, scientists and the Reporter are all concerned to produce the same 'relevant facts' on which a decision can be made. They thus perceive the inquiry as a

forum for the construction and presentation of these facts and also for their defence if they are 'seriously' challenged, by other 'relevant facts'. This form of participation is very familiar to them: it is how they earn a living. This "frame of reference" is, then, quite explicit in their participation. Though they will not necessarily be aware of their actions, their frame of reference is relatively precise, and relatively accessible to sociological investigation. I would argue that the lay objectors' approach to the inquiry is quite different. So far, I have only described the 'content' of their participation, I will now discuss their techniques of participation before I attempt to provide a general account of their participation in the inquiry.

Techniques

Those lay objectors who participated regularly in the inquiry and who were unaccustomed to the skills of cross-examination gradually picked up certain techniques as the inquiry progressed and their confidence and experience increased. The Reporter himself commented that cross-examination was a technique which had to be learnt. There was a noticeable difference between advocates and lay objectors, in the smoothness and accuracy of their cross-examination.

Many of the objectors found difficulty in not giving evidence during their cross-examination. Cross-examination is meant to challenge points made by the witness in his evidence (or precognition) and one is not allowed to give evidence in cross-examination. As noted earlier, the Reporter often but not always

corrected the questioner if this error was made. Every piece of the cross-examination must be framed as a question (a point recognized in the transcript by placing a question mark after each remark made by the questioner whether or not it was grammatically interrogative.)

This was gradually learnt by the objectors but an allied problem arose in their failure to allow a witness to comment on each hypothesis before asking him the final question, with the result that the witness often could not answer the question because he did not accept the hypothesis. Thus the objector might accuse a witness of being evasive when the witness was only trying to be accurate. The intrusion of hypotheses, qualifications and "throw-away" judgements, results in a question being begged to such an extent as to be impossible to answer accurately. The ineptitude of several of the objectors in cross-examination caused them much embarrassment and frustration. e.g.

Objector: You refer to the enhancement of the community, prospective enhancement of the community to use my words - "in the quality that our trained employees bring to the communities in which they live." Now perhaps I am unduly touchy but I would imagine so should many of the people be with whom you have to deal.
This implies.....

Reporter: I think you are giving evidence again and interpreting what he says. Give the witness a chance to say what he means by it and you can follow it up if you feel he hasn't given the correct answer.

Objector: Fair enough. I will simply say briefly that these employees that you are pouring in as new trades people to uplift the quality of a backward people.....

Reporter: No no really you give us so many throw-away assumptions that unless the witness is noting them as he goes along he isn't going to be in a position to answer the question. Those who are unfamiliar with the discipline of cross-examination because it is a discipline, do tend to tell a wee story before they come round to the question. So if we could ask the witness to react to this statement and say what he means and then you can come back on him. I am not trying to protect the witness from you.

The last remark of the Reporter is interesting as it refers to the conflict nature of the adversary procedure: the Reporter claims not to be protecting the witness from presumably the attack of the examiner. It is difficult to see any point in this objector's cross-examination other than to discredit and criticise the witness. If the evidence under criticism was crucial the examination might have been relevant. This was not the case, and it seems that the Reporter was simply allowing the objector to have his

say, though insisting that he adopt the correct techniques to preserve the appearance that the examination was relevant. It seems also that the Reporter was aware that the examination was irrelevant to his final report from his prior interventions into the proceedings.

In this instance, the objector did not continue his cross-examination after the Reporter's final comments. Despite the efforts of the Reporter to be impartial and informal, his remarks could easily have been taken as a reprimand; embarrassing, because the objectors in general took great pains to avoid disrupting the inquiry or upsetting the Reporter. Their anger was directed at higher authorities and not at the participants in the inquiry.

A further unwritten 'law' of cross-examination is "do not ask a question unless you know the answer yourself". Adherence to this rule enables the questioner to maintain control of the examination, by only allowing the witness to say what he wants him to say, hence controlling the knowledge produced at the inquiry.

"the person who asks the questions is structurally very much in a position of control." (Atkinson and Drew 1979)

This is particularly true when the person is a skilled advocate with command over all the techniques of cross-examination, and a clear idea of the case he is trying to present.

The advocates in the inquiry tended to ask a series of questions, the answers to which, would lead to a conclusion designed to fit under the Reporter's category of relevant fact. Though after

a while the objectors recognized this technique and attempted on occasions to put it into practice, their basic method of cross-examination was quite different. Each objector would question on every point of the witness's evidence or precognition which he found unclear, did not understand, thought might be inconsistent or even wrong. Thus the objector rarely knew the answer to his questions, quite the opposite, the questions were seeking new information. These questions gave some control over the answer to the witness and very often simply enabled the witness to reassert his own evidence more clearly.

There are other differences between the cross-examination techniques of advocates and lay objectors. The former tended to ask short concise questions, very often only requiring a yes or no from the witness. It is much easier always to know the answer to your question if there are only two alternative answers. This technique results in a rapid yet smooth flow which requires little effort to follow. The lay objectors' questions tended to be more rambling, to include more hypotheses, to be less articulate and to allow the witness to be more expansive in his response. It required much greater concentration from the observer to pick out the points which were being made, if any, and resulted more often in confusion and obscurity than precision and clarity. A visit to any court will demonstrate the fluency, precision and control of most experienced lawyers.

The experienced advocate is aware that similarly experienced witnesses will be able to avoid answering certain questions quite legitimately without any remonstrance from the Reporter. These

include questions referring to someone-else's reasons for a decision, questions asking for a personal opinion, questions more properly answered by another witness, questions outside the witness's competence etc. Advocates can get the information they require by asking a different series of questions or framing the questions in a different way. (That is, assuming that the information is important and relevant. Often these questions are not relevant and are dropped if an answer is not forthcoming) this was another cause of frustration amongst the objectors. Many of their questions were evaded, passed on to another witness or made into a joke by experienced witnesses. e.g.

In this example the witness has given evidence that the N.G.L. plant is 'not a dirty industry'

Objector: They are very unsightly would you not agree?

Witness: They may be unsightly, that depends, beauty is in the eye of the beholder is it not?

Objector: I personally might say that a bing covered with grass was more beautiful than a gas cracker plant.

Witness: That would be a matter for you to decide.

Objector: Do you think the local politician who introduced a cyanide plant outside Milan probably thought the same thing. (That it would stimulate the local economy).

Witness: I am not aware of the mental operations of any Italian politicians, I have a big enough job

in Fife without worrying about that.

In the first example the witness is asked a question which was interpreted by the witness as requiring a subjective answer. As the inquiry was only interested in objective facts and not mere personal opinion, the witness was easily able to avoid answering the question.

In the second example the witness realises that the Reporter will not compel him to make subjective assessments of someone else's decisions and so avoids answering what, as in the last case, seems, in common sense terms to be an obvious question. These are the sorts of questions often asked by the objectors.

Towards the end of the inquiry the lay objectors began to realise that these subjective questions would not elicit the answers they wanted and they either tried to frame their questions differently or satisfied themselves with the evasive answers.

Some of the witnesses were so adept at deflecting questions, finding obscure interpretations or qualifying their answer, that at times, even the advocates found difficulty in getting the answers they wanted. After one local politician, who according to the Reporter was a canny man "who handled cross-examination very well", had been cross-examined by several lay objectors, the objectors' advocate began his cross-examination saying "I'm determined to get a yes or no out of you". It is interesting to note that the Reporter admired someone "who can handle cross-examination". From the reaction in the inquiry to this exchange, it would appear that

lawyers share this admiration. This fits with the Reporter's earlier characterisation of cross-examination as an 'art-form'. It is seen as a precise tool, a set of techniques which, performed correctly, can provide the Reporter with the information which he requires. However the subtlety of the techniques is demonstrated by the ability of experienced witnesses to thwart the less experienced practitioners.

It is hardly surprising then, that, though they improved dramatically during the course of the inquiry, the lay objectors never mastered the techniques of cross-examination. I give two examples out of the many.

Objector: "So far I am having great difficulty getting clear-cut simple answer to what I would have thought are simple questions"

Witness: I can give you a simple answer, that is just not so.

Objector: So no effective survey was carried out on alternative sites?

Witness: What you say is just not correct, I carried out this survey and for the first time in my life, I am hearing the suggestion I don't know how to carry out a survey comprehensively and properly.

Objector: If you will forgive me, it is rather difficult to know what you do say because when I put it to you that, did you carry out the only effective survey of alternative sites that was carried out you said no?

Witness: Well that is right, I didn't carry out the only effective survey because these other people looked at these other sites, the team did.

Objector: The team?

Witness: The team looked at these other sites, I was the first person to get onto the sites and say to these companies. "In my opinion there are various places that might be possible in this area, some are better than others, one or two of them are hopeless but they are worth more detail" and when they had done that their own team came in and made an entire assessment and then it was decided to go for Moss Moran.

Objector: So their own team did in fact carry out a survey of the sites...?

Witness: I understand so, I wasn't with them, but I understand so.

Objector: And you understand that survey was a thorough one?

Witness: I am sorry I am not going to speak for the company at all. I wasn't with them.....I don't know what they did.

Objector: And yet you are in a position to give an opinion that what I have just implied is not so?

Witness: Indeed, I am because I know it wasn't so. You are saying that nobody else carried out a survey and I say that is quite wrong, that the team did.

Objector: I said a proper survey?.....etc.

This example shows the confusion and frustration which can arise when the questioner combines a lack of knowledge with an inaccurate and imprecise form of questioning. The witness attempts to answer the question accurately and finds that the questioner is not satisfied. This is not because of an evasive answer but because of a badly framed question.

A further example

1. Objector: You also agree that under the heading of Manufacturing Industries that Electronics and light engineering companies feature largely in the Fife area?

Witness: They feature in some areas largely?

2. Objector: In the overall employment situation in Fife?

Witness: They constitute a proportion - but in some areas they are not present.....

3. Objector: Do you not also point out in your Regional Report that the employment in manufacturing and service sectors has the largest growth potential?

Witness: I would not be in a position to be categorical about that.

4. Objector: I rephrase that question and say would you agree that in the Regional Report you forecast a substantial growth in electronics and light engineering industries for which Fife is well placed?

Witness: Well - I think that is the case. We are supposed to be the electronics centre of Western Europe.

5. Objector: Am I not also right in saying that the employment in these sectors has been increasing and growing over the last ten years?

Witness: In some instances although they have in fact been affected by the economic recession.

6. Objector: But as an overall situation am I not right in saying that there has been a growth of employment in these sectors which in fact goes against the trend in Scotland generally?

Witness: There has possibly been a small growth in these industries but insufficient to take account of unemployment that obtains in the Fife Region.

7. Objector: That was not my opinion. "During the period 1964 to 1974 there was an increase in manufacturing employees in Fife of over 40% the largest increase in the whole of Scotland." You would agree therefore that over the last ten year period the manufacturing industry has been growing?

Witness: Yes, but not sufficiently.

8. Objector: In the light of all I just say would you not agree that the long term solution for Fife's unemployment problem lies in the light industrial and service sectors which are compatible with existing industries and not in the primary industries such as mining or its modern counterparts the oil or gas-related industries?

Witness: No I would not agree with you. I think the responsibility of the Regional and District councils is to ensure as wide a diversification of industrial opportunity as is possible.....

An example of an objector attempting to build up to a point and being frustrated by the witness's refusal to commit himself as well as by his own imprecise questioning. Almost every answer is qualified which means that the questioner has to work harder to establish the point. Question 2 is a more precise version of question 1 as is question 4 of question 3 and 6 of 5. The point is finally established in question 7 then, having seemingly cornered the witness into admitting that employment in manufacturing industry in Fife is growing (against a national trend) the questioner lets the witness off the hook by bringing in "the long term solution to Fife's unemployment problem" and "compatible with existing industries". These terms have not been defined or discussed and the witness can thus begin qualifying and introducing new material. The remainder of this piece of cross-examination led the cross-examiner nowhere and he eventually gave up and started on another point.

I want to mention one further point of difference between lay and professional cross-examination. The lay objectors tended to be very repetitive. They made the same points many times both within one piece of cross-examination and in their cross-examination of different witnesses. They tended to ask more questions than were, strictly speaking, necessary. The advocates, on the other hand, made an effort to restrict their questioning to the minimum. Indeed so skeletal were some pieces of their cross-examination that, as a lay observer, I could not understand what points had been made nor what argument had been established, without close attention to the transcript and the relevant precognitions of evidence.

One explanation for this difference lies in their different approaches to the inquiry. Since the advocates were aware of the Reporter's criteria for ascribing facticity and relevance to evidence (i.e. they knew the sort of information which would appear in the 'findings of fact') and since they knew that the Reporter read a copy of the transcript of the day's proceedings each evening, they were able to present their facts and arguments as clearly and as briefly as possible in the knowledge that this would make life easier for the Reporter. They were, in effect, constructing and presenting knowledge for the Reporter to read.

The objectors having, a different approach to the inquiry, were more concerned, I would argue, with the public presentation of their case. They needed to hear the witness concede a point in cross-examination and the objectors wanted to be sure that the Reporter was aware of this concession. For the objectors, the inquiry was a public contest, where the rhetorical content of an

argument was important. The advocates seemed less rhetorical in the inquiry than they might have been in court trying to persuade a jury of the credibility of evidence. This is because they saw the inquiry as being concerned with the presentation of scientific and technical information, to a Reporter who shares their assumptions.

In contrast to the participation of the main lay objectors, it is instructive to look at that of the R.S.P.B. representative, an experienced 'inquiry-objector'. The R.S.P.B. objection was into bunkering facilities for fuel oil and the possible deleterious affects on wild birds. The representative's cross-examination was brief and precise. He established that there were two possible bunkening sites, suggested that the site which posed less of a threat to wildlife ought to be chosen, and negotiated a couple of minor conditions concerning the operation of the facilities. Thus, the objection was against a specific issue, rather than against the entire project. The representative was realistic enough to know that he could not avoid bunkering facilities and so negotiated the best compromises he could under the circumstances. Because he had settled for a realistic goal, he could frame his questions precisely towards the achievement of that goal.

His aims and techniques fitted well with those of the lawyers and experts in the inquiry. Both his evidence and cross-examination provided 'relevant facts' for the Reporter. This can be seen in contrast to the inarticulate and contradictory aims of the objectors, and the variety of techniques used to pursue these aims. Their assumptions about the nature of society and the nature of the inquiry do not fit with the assumptions put into operation by the

professionals, as I will argue later in this chapter.

From the evidence so far presented I would argue that it is clear that lay objectors had a different, "frame of reference" from the "professionals" in the inquiry. For the latter, the inquiry was an administrative procedure, the primary function of which was to collect a certain sort of information on a limited range of issues concerning the proposed Shell/Esso development. I have described this as the bureaucratic function of the inquiry. They also shared knowledge of the correct techniques of participation.

The frame of reference underpinning the lay objectors' participation is less precise, full of contradictions and is constructed during the course of the inquiry. Because of its variety and imprecision, the objectors' "frame of reference" is much more difficult to isolate analytically, but I will describe what I think are the most important constituents.

The first point is that the techniques of the lay objectors changed during the course of the inquiry. Initially, few of the objectors had much experience of public speaking, far less of cross-examination in a public inquiry. There are no formal instructions to laymen on how to participate. At the pre-inquiry procedure meeting the Reporter gave the objectors some clues. He confirmed his intentions to make participation easier for them, warned them about being repetitive in cross-examination, and the participants were given information about the advance circulation of precognitions, the organisation and timing of witnesses, and the desirability of avoiding time wasting. This did not give any clear

descriptions of the aims of the inquiry or the appropriate modes of participation during the inquiry. The Reporter's comments concerned the timing of the inquiry, its efficiency and his sympathy with the (unspecified) problems of lay participation.

The objectors had to rely on their scant knowledge of public inquiries, and what most of them referred to as their "common-sense". In selecting appropriate behaviour in an unfamiliar setting, people will tend to refer to the models provided by significant others in the setting. In other words the objectors (5) would model their participation on the advocates and look to the Reporter for approval of their techniques or for suggestions for change. Also from a pragmatic point of view, the objectors were aware that the Reporter as the person responsible for the final Report and recommendations, was the man whom they had to impress. One obvious way of gaining the Reporter's respect was to present themselves as decent, responsible, moderate, conscientious citizens, as people who took their democratic responsibilities in the inquiry seriously. Again the obvious way of showing respect for the inquiry and for the Reporter, is to attempt to participate in the same manner as the advocates, i.e. to behave "properly" in the inquiry. So not only was there no other model of behaviour for the lay objectors to adopt, but the mode of participation used by the advocates, appeared to be appropriate for the effective presentation both of themselves and of their case.

I have argued that the lay objectors learnt some of the

(5) The concept of "significant other" comes from Mead (1934).

techniques of cross-examination as the inquiry progressed but this was of little avail to them either because they were pursuing irrelevant topics with the correct techniques or because they had inadequate mastery of the techniques e.g. they would learn to conduct cross-examination without giving evidence and would build up a set of questions attempting to make a point and then be frustrated in their efforts by an inability to frame their questions with sufficient precision. As the inquiry progressed, the lay objectors became more confident and more skilled in cross-examination, in imitation of the advocates. Thus, to this small extent, they reproduced the dominant frame of reference through their attempts to adopt the techniques of the adversary procedure.

On one hand, the objectors orient towards the techniques of the adversary procedure. They see them as the "correct way to go about things" in the inquiry; as a way of impressing the Reporter. They also get a good deal of personal satisfaction from their modest successes in mastering a new skill. As the inquiry progresses they get enjoyment out of "playing at lawyers", in some cases, quite convincingly. However, the more like lawyers the objectors become, the more legitimacy they award to the system. They begin to experience the inquiry as conducive to lay participation, after all, they are getting answers to questions, the Reporter appears to be listening and reacting, the witness is taking the questions seriously. As their participation is accepted, so they feel they are being given an opportunity, that their participation can be effective.

On the other hand, however, the objectors find the techniques

of cross-examination difficult. They have to learn them during the course of the inquiry from their observation, listening and discussion amongst themselves. Thus because they only partially share the dominant frame of reference, their cross-examination is often frustrated. They can't get an answer to their question because it is badly worded, or irrelevant, or repetitive, or addressed to the wrong witness. This leads them to feel that witnesses are being evasive, that the inquiry system is loaded against them, that no-one wants to listen to their arguments and that the decision has already been taken "behind the scenes" anyway. It is in this sense that they can be said to have penetrated the dominant frame of reference. They feel frustrated at the lack of response to their efforts. They feel that their participation is worthless and that the claims of the inquiry system to offer them an opportunity to participate are just empty rhetoric.

Thus their orientation towards the techniques of cross-examination causes anger, frustration and criticism of the system and at the same time provides them with personal satisfaction, optimism, and some commitment to the value of their participation in the inquiry. On balance, the latter positive attitudes predominate. The objectors, overall, feel that the inquiry does give them an opportunity to participate and this is one way in which the procedures of the inquiry are granted legitimacy.

While the objectors, during the inquiry, grew more "professional" in their approach to the inquiry, still, the majority of their questioning in cross-examination took different forms. They only attempted to adopt the techniques of cross-examination,

and to stick to technical subjects in certain parts of their cross-examination. In general, their basic technique of cross-examination was to go through a witness's precognition and ask a question on any section which they found ambiguous, which they did not understand, with which they disagreed or were angry or to which they had a sufficiently strong reaction. They put questions requiring a personal response to expert witnesses, they asked questions about the morality of the development, and they made personal attacks on witnesses. In addition to playing the part of "lawyer" they also, and predominantly, played the part of "layman", i.e. they presented themselves as intelligent and responsible members of society who were nonetheless naive and relatively ignorant both of the law and of the technical detail of the subject matter of the inquiry. One objector in particular would often preface his questions with disclaimers e.g.

"Now I am just a simple man, but....."

or

"My knowledge of these things is very
limited but it seems to me that....."

The implication is that somehow lack of expertise or of knowledge or of a technical speciality is no real drawback; that somehow, careful, rational thought can produce questions which can be as penetrating and useful as those of the advocates, and, that where rational thought fails and emotional reaction slips through, then that is a legitimate expression of the strength of their convictions which ought to be taken into account by the Reporter.

There is, then, within their participation, a contradiction between a "professional" understanding of what the inquiry is about and how they can best participate, and a less articulate belief in their democratic right to express themselves; an assertion of their "freedom". Ironically they experience the exercise of their rights more clearly when they are restricting their participation to the professional mode and tend to be frustrated when expressing themselves more freely.

These contradictions are manifested throughout the participation of the lay objectors.

From the earliest stages of the formation of the Action Group before the inquiry, to the immediate aftermath of the inquiry, there was always an undercurrent of pessimism amongst the objectors. This was expressed in various ways,

"What chance have we got against giant multi-nationals?"

"Its all been covered up already by the politicians."

"We don't stand a chance in the inquiry."

"The decision has been made already, this is just window dressing."

Almost everyone of the objectors at some stage made this sort of comment. They felt that there was very little chance of the applicants being refused planning permission, and that there was very little they could do about it.

Nevertheless, they worked hard to establish and organise the Action Group, spent much time on research for the inquiry and participated vigorously and enthusiastically in the inquiry. This energy could hardly have been devoted to a completely "lost cause". The objectors felt that so long as they used the available democratic procedures correctly and responsibly that they stood some chance of success, and that the decision might go in their favour. The objectors may have been reluctant to express such optimism, but their conduct is incomprehensible without this fundamental faith in the ability of this democratic institution to provide them with justice.

The participation of the lay objectors is full of contradictions. They believed that the inquiry was a sham and that they had no chance. They also believed that democracy would somehow provide them with justice.

Sometimes they attempted to behave like lawyers in the inquiry because it seemed "the right thing to do" and because they felt it offered them more chance of success. Most of the time, their participation was eclectic, an expression of their view of democratic participation i.e. that they should as free and equal citizens stand up in the inquiry and put forward their arguments against the development.

When the objectors behaved like lawyers, they felt they were participating effectively in the inquiry. However their most deeply felt oppositions to the development appeared in their non-professional participation.

The existence of these contradictions raises a number of questions. What are the sources of their optimism and pessimism and why does their optimism dominate?

Their pessimism comes from a pragmatic distrust of politicians in action and a realistic awareness of the power of multi-national corporations. Their optimism from a belief in the ability of our democratic society to provide justice under the law, to protect the rights of the individual and secure our freedom. The objectors were fundamentally sustained by a belief in the moral rectitude of their case, the objectors felt that they had "right" on their side.

How important is the adversary procedure for securing legitimacy? I argue that one of the main reasons why the objectors feel the inquiry is fair is that they actively feel like a participant when they are adopting the techniques of advocacy with some degree of success. They feel effective. Whereas, when they express their objections in a more spontaneous manner, they feel frustrated and pessimistic.

There is a sense, then, in which the adversary procedures, are necessary for securing legitimacy. The use of these procedures though they inhibit lay participation in some ways, also enable lay participation in ways which the objectors experience as meaningful.

How is it possible for such contradictions to exist simultaneously?

"People often maintain unreconciled

contradictions in their viewpoint,
contradictions expressed in different
contexts.....it is in this linkage
between opinion about national policy and
immediate experience that many of the most
obvious contradictions arise." (Hall et al
1978)

Participation in the inquiry for the professionals is a job;
a routine which is largely detached from other parts of their lives.
(6)
Though some of the objectors' cross-examination attempts to address
the expert witness in his capacity as parent, or as a moral
conscience, the expert witness can keep these roles outside the
inquiry.

For the objectors, however, the inquiry is much more than a
job. It involves more than a professional commitment. They are
involved as representatives of their families, their communities,
and, on a broader level as active "political" participants in the
democratic process. This is an opportunity to participate in the
system, in which hitherto they may have done little more than cast their
votes. The development has direct implications on their lives, they
have the chance to contribute to the process of deciding whether or
not it should go ahead.

The contradictions in their participation lie between their
immediate experience of the political process and their less
articulate "common-sense" notions of what it means to be a member of
democratic society. The latter involves such ideas as the nature of

(6) Weber argued that this was an important part of bureaucratic
organisation. See chapter 2 and Weber (1964).

justice according to law, the relationship between the individual and the state, and notions of reasonable and responsible behaviour.

These are nebulous and complex ideas, but it is important to describe, even generally, some of these ideas, because of their powerful effects in the inquiry.

In trying to account for "common-sense" attitudes towards crime, (Hall et al 1978) resort to an analysis of what they call "the English ideology", some features of which apply to the common-sense attitudes of the lay objectors to their participation in the public inquiry.

Their political role in the inquiry is governed by notions of "respectability", "self-discipline" and "deference to authority". Despite a streak of non-conformity, the objectors begin with a respect for democracy and its institutions, exemplified by their respect for the Reporter during the inquiry. Democracy depends on the exercise of self-discipline by the individual, otherwise our society would lapse into tyranny or anarchy. Thus as objectors at the inquiry they have a duty to behave responsibly, to conform to the expectations of the Reporter, to be considerate, obliging and not to cause trouble.

The public inquiry provides a forum in which the individual objector can air his grievances against corporations and State officials. The inquiry symbolically promises justice, equal treatment and neutrality both in the rhetoric of "lay participation" and in the speech and actions of the Reporter. The classical

liberal model of law (see chapter 2) does not describe the objectors' experience of law in action or even politics in action, but coupled with a respect for authority, and the professionalism and disinterested reasonableness demonstrated by the Reporter and the lawyers in the inquiry, this model remains a powerful symbolic foundation for their participation. Despite both evidence and strong feelings to the contrary the objectors retain a residual faith in the ability of the inquiry process to provide them with justice. They retain

"A vague image of the rightness, reasonableness and fair play of the British system of justice." (Hall et al 1978)

These notions are deeply embedded in the way the objectors make sense of the world. As far as they are concerned these ideas are a matter of "common-sense". For them it is "natural" to respect authority and to behave "properly". Their enthusiastic participation is based on a faith in the capacity of law in a democracy to provide justice and a belief in the moral rectitude of their case. Being predominantly middle class, these objectors also believe themselves to have a certain status and importance in a democracy, such that their voices will be listened to.

Their pessimism derives from their deference to authority and from a residual fatalism. While they accept in general terms the realities of politics, their own distance from the exercise of power and the need to accept what happens as inevitable, they also retain beliefs in justice, democracy, self reliance and self-importance which, when they are faced with an immediate personal problem, can

combine to dominate their attitudes of passive resignation.

These beliefs and attitudes are not produced by the inquiry but they have to be reproduced in the inquiry. In other words, "social structures must pass through the cultural milieu" (Willis 1977) the objectors have to reproduce these contradictions in the inquiry. I have argued that the objectors can be said to have awarded the inquiry legitimacy for a number of reasons e.g. their active and enthusiastic participation throughout the inquiry, the absence of any attempts to disrupt the inquiry or to give up their participation, and their expressions of satisfaction at the conclusion of the inquiry. However they were also sceptical of the inquiry process and of the possible effectiveness of their own role in it and expressed a cynicism towards politics in general. Thus legitimisation was secured only with a struggle. I have shown the various ways in which the objectors' commitment to the status quo was sustained in the inquiry. Their faith in the fairness of the inquiry process limited the potential effects of the anger and frustration which arose when they "penetrated" the dominant technical-rational frame of reference i.e. when they realised that their interests and arguments were irrelevant to the outcome of the inquiry. Legitimation operates in the social practices of the inquiry only through the existence of these contradictions.

Though the inquiry might transform the "political" into the "technical/rational" (Roger 1978) or be seen as using the symbolic power of law in a political ritual (Lukes 1975) neither of these are totalitarian processes. The maintenance of hegemony is an active struggle with opportunities for either side to reinforce or threaten it. In the

final chapter I will discuss the importance of this level of analysis, and draw some conclusions of relevance to those concerned with the reform of public inquiry procedures.

CHAPTER 8

Sociological Analysis and the Public Inquiry

In this final chapter, I want to draw together the analysis conducted in the previous four chapters to give a description of the public inquiry in terms of the production and reproduction of ideological structures. I argue that this analysis, which attempts to describe how power operates in day to day social practices, is important because it faithfully portrays the contradictions and dissonance which exist at the cultural level. I describe some of the ways in which social practices are inextricably related to social structures and how power is related to knowledge. This has important implications both for the conduct of sociological inquiry and for contemporary political practice.

These arguments are made by comparing my analysis with studies which deal with lay participation both in the public inquiry and more generally in the legal process. I argue that my analysis retains space for political practice which is logically eliminated by the methods of these writers though each would claim to have political aims. I share their aims but argue that their analysis gives little assistance in selecting appropriate strategies to pursue these aims.

Finally, I make some further comments on the relationship between sociological inquiry and political practice and suggest some strategies for making the public inquiry more susceptible to democracy.

Summary of Analysis

This section summarises the analysis of chapters 4 to 7. Inevitably I make generalisations and simplifications but qualifications can be found in the corresponding sections of the relevant chapter. My aim in this section is to give a more stark analysis, in order to draw out the significant implications.

There are few stated rules or directives governing procedures during the public inquiry. Procedure is left to the discretion of the Reporter. The Reporter is the central figure in the inquiry. His two main functions are the control of the procedure of the inquiry and the collection of information. I argued that the latter, his "bureauratic" function, was more important than his "democratic" role of assisting and encouraging lay participation.

The Reporter was sympathetic and helpful towards the lay objectors. They acknowledged this. He also attempted to maintain a mood and atmosphere in the inquiry which was less formal than a court of law. Thus, on the surface lay participation appeared to be a less daunting task in the inquiry than in a law court.

However the Reporter insisted that the objectors try to observe the rules and techniques of cross-examination. This not only restricted what the objectors could say, but also when they could speak and how they should express themselves.

This was the balance maintained by the Reporter between his

obligation to enable laymen to participate without professional representation and his task of collecting relevant factual information. So long as "informality" did not threaten the "evidence-testing" function of cross-examination, and did not prolong the inquiry "unnecessarily" the Reporter was prepared to be tolerant. (see chapter 4) Thus he would not allow the objectors to give evidence during cross-examination though he would allow some irrelevant questioning, if, for example, it seemed to be important to the objector.

By the operation of his discretion, which is based on his professional knowledge of the functions of the inquiry, the Reporter balances concessions to laymen with the efficient collection of relevant facts, in a way which gives a fairly relaxed atmosphere to a tightly organised set of procedures.

These procedures are designed to give the Reporter relevant facts on a particular number of issues. e.g. the detailed design of the plant, certain qualities of the marine site, the acceptability of the impact on the environment etc. The need to exploit oil resources is a matter of government policy and therefore an unchallengable 'fact' for the purposes of the inquiry. The Reporter is concerned to establish that the development satisfies certain regulations governing safety, environmental health and planning. Evidence is assessed according to precise criteria of 'relevance' and 'facticity'. (see chapter 5)

None of this information, with the exception of the factual status of Government policy, is publicly available to lay

objectors, though it is part of the professional knowledge of lawyers and also the technical experts who gave evidence for the applicant companies. For example though evidence is given at the inquiry by a succession of witnesses, this evidence appears in the findings of fact organised by 'issues'. It is clear that throughout the course of the inquiry the professionals are aware that the inquiry is concerned with certain "issues" but this is never made explicit to the objectors.

In general the "professionals" share a precise "frame of reference". This concerns the object and functions of the inquiry, the issues involved and the criteria for ascribing relevance and facticity to evidence.

It is in this sense that the inquiry is highly formalised. Though the atmosphere may be informal, though laymen are encouraged to participate and though sympathy for their difficulties is expressed, the objectives and procedures of an inquiry are in many ways as precise and formal as those of a court of law. (see chapter 6) The knowledge required to participate in an inquiry in a "professional" manner is inaccessible to the ordinary layman without considerable study and thought.

For the professionals the question "should this development be permitted" is not a moral, political or emotional question but a technical question which can be answered by referring to a particular sort of information on a limited number of issues.

Thus, their participation involved the reproduction of a precise professional frame of reference. The Reporter's control of the lay participants also involved the reproduction of broader ideological notions of "fairness" and "justice" which he had to fit in with his more important functions.

The objectors' participation was not underpinned by a coherent frame of reference, and contained many internal contradictions. (see chapter 7) On the one hand they knew that their arguments would make little impression to the final outcome of the inquiry both because they had inadequate resources and because they felt that the decision to proceed with the development had already been taken behind the scenes by the politicians. They felt powerless and manipulated and were critical of the inquiry system and thus, with the democratic process more generally. On the other hand, however, they participated diligently in the inquiry, they attempted to put forward technical arguments through their advocate, they became more proficient at the techniques of cross-examination and at the end of the inquiry felt that the Reporter had been sympathetic and fair.

These contradictory attitudes existed within the Action Group both before and after the inquiry. It is not that their criticisms and frustrations were "cooled out" by the conduct of the inquiry itself, so that they disappeared, it is rather that the objectors' belief in democracy, in the ability of the legal process to produce "justice" and in the value of "reasonable" behaviour was sufficiently

(1) Garfinkel 1952.

reinforced during the processes of the inquiry to secure their reluctant award of legitimacy. In other words they did not disrupt the inquiry, or refuse to participate, but participated in the inquiry at the same time remaining critical of the inquiry system.

Thus, encouraged by the atmosphere in the inquiry and the sympathetic approach of the Reporter, the objectors retained a residual hope that somehow the moral justice of their case would be recognised, and their belief that democracy and law were concerned with this sort of justice would then be justified. At the same time they knew that the outcome of the inquiry would go against them and that the powerful forces ranged against them would win. Their hope in the inquiry lay with the fairness and sense of justice manifested by the Reporter. Ironically, their efforts to please the Reporter drew them into behaving more like professionals and proffering technical/rational arguments.

My argument is that the inquiry exists as a legitimate institution precisely because of the contradictions within the ideological structures reproduced by the lay participants and that the procedures of the inquiry operate to preserve these contradictions by reinforcing the ideologies of "justice according to law" and "individual responsibility" which are important assumptions of the dominant ideological structure of liberal-democratic law. The penetrative criticisms of the objectors are limited in their effectiveness by these powerful conservative ideologies. However these ideologies are "real", in terms of the perceptions of the objectors. Their criticisms are based more in self-interest than in any alternative political theory. It is not that they suffer from

false-consciousness or have their "real interests" concealed from them. The inquiry system does not by itself construct an allegiance to the status quo for the objectors, this allegiance already exists; the inquiry procedures provide opportunities for this ideology to be reproduced.

I have attempted to show how the ideologies of representative democracy and of the neutrality and justice of law, are reproduced in the inquiry so as to secure legitimacy for the inquiry system and more generally for the democratic process. This is accomplished by the incomplete correspondence between legal rhetoric and legal practices. The rhetorical claims concerning the importance of making lay participation easier are reproduced in their rhetorical form and also in certain practices which are experienced as helpful and "informal" by the lay participants. However the dominant ideologies reproduced in practice (i.e. the professional frame of reference) control the practical outcome of the inquiry in terms of the "facts" on which a decision will be based and this frame of reference is not made publicly available. In this sense I have attempted to show how legitimation works through day to day social practices; through the complex inter-relationships of power, language and knowledge. This analysis demonstrates the fragile nature of consent even amongst the conservative middle-class when their own interests are threatened by the State claiming "the public interest" as justification.

I have argued that it is only by describing the complex and contradictory processes whereby power operates through social practices that one can understand how legitimation works, and that this is a crucial problem both for sociological inquiry and for

political intervention.

I now want to demonstrate the usefulness of this approach to sociological analysis by comparing my work with another sociological study of the same public inquiry.

Sociological analysis and political practice

John Roger (Roger 1978) describes the inquiry system as restrictive. It reduces a political agenda to a technical agenda so that,

"the question quickly becomes one of what ways (sic) can the development of a particular site be made more agreeable to objecting parties than should the site be used for this purpose at all."

He argues that the public inquiry system generates "inauthenticity". The system generates the appearance of "responsiveness" but also "the feelings of having been cheated and manipulated" Objectors are somehow led to believe that they have an opportunity to participate in the decision-making process but the system operates to exclude people

"from controlling the quality and direction of their social existence". (Roger 1978)

He characterises this gap between the appearance of

responsiveness and the reality of exclusion by using concepts from Habermas.

For Habermas public policy is now made and justified in a "techno-decisionistic" manner. Experts decide on technical solutions to problems, based on their specialised knowledge and politicians make decisions based on these technical solutions. This is contrasted to the open and unrestricted public sphere, which Habermas would like to see, where public needs are decided based on the values and norms of a community which are generated in free and open public debate, and where there is free interaction amongst experts, politicians and the public.

The inquiry, for Roger, is 'techno-decisionistic'. The Reporter favours a "closed state of knowledge" which consists of carefully selected technical evidence which

"directly engages the inquiry remit"

and is less inclined towards an "open state of knowing" favoured by the objectors which would admit

"broader or more personal factors into the evidence".

The power to control what counts as knowledge lies with the State and thus in this inquiry with the Reporter as a State agent. In general for Roger, in the inquiry

"the ideal speech situation gives way to complexity reduction"

In an "ideal speech situation" (again from Habermas) a consensus of truth is arrived at through rational argument. It is assumed that there are no structural limitations placed on the selection and use of speech acts. This is then an authentic public sphere of rational debate between equals where "participants must accept the force of the better argument." This ideal mode of public debate and decision making has given way to "complexity reduction" (Luhman) where debate is limited, and dysfunctional ideas and knowledge are systematically screened out of the decision-making process.

Roger goes on to argue, with reference to the Moss Moran inquiry, that because the inquiry system failed as an "institutionalised ideal speech situation", the lay objectors were forced to express their case outside the inquiry forum, through a press conference and a published statement of their case. He also argues that the objectors were forced to adopt a technical/rational case concentrating on hazard because of the technical emphasis of the inquiry.

He concludes by commenting

"the chance for an open public forum was lost and the scenes reminiscent of the English mortorway inquiries never materialised."

At a general descriptive level, Roger and I share a broadly similar view of the inquiry. Our main points of agreement are as follows.

"Political" questions are dealt with as "technical" problems, and decisions are based on the specialised technical evidence of experts. This is presented ideologically as a neutral, technical/rational process. The public inquiry system does, rhetorically, offer the promise of participation but does not redistribute power to enable lay objectors to present certain sorts of argument in certain sorts of way i.e. to adopt technical/rational approach themselves.

However there are a number of ways in which Roger's analysis is unsatisfactory. He does not explain how it came about that

"the scenes reminiscent of the English motorway inquiries never materialised."

We agree that the objectors were aware of the disruptive tactics used to prevent such inquiries taking place and were equally aware that this was a tactic available to them.

Roger argues that they did not adopt these tactics because they were forced by the inquiry system to adopt a technical-rational case. I agree but argue that the objectors did not "select" this approach as a deliberate alternative to some other tactic which then disappeared from their concerns. My analysis of their participation shows that their other tactics were sustained throughout the inquiry

alongside their technical/rational approach. The inquiry system is awarded legitimacy precisely because these penetrative tactics are permitted in the inquiry, i.e. because the lay objectors experience participation in the inquiry as meaningful.

Roger cannot account for the award of legitimacy to the proceedings made by the objectors. He describes their participation as being both "engaged" and "disengaged" without being able to account for the logical contradictions in their actions. I described the objectors' participation as the reproduction of a variety of ideological structures. The liberal/democratic ideology dominated the critical penetrations made of it. It was powerful enough to overcome those occasions when the gap between rhetoric and practice became too obvious. In other words though the objectors felt that the inquiry was a sham and was unjust, they remained convinced, as responsible citizens, that the law would somehow provide them with justice and that the conventional procedures of democracy could be relied upon. (see chapter 7) Some explanations for this particular pattern of ideological reproduction can be found in the day to day procedures of the inquiry e.g. the objectors felt that the Reporter had made great efforts to aid their participation, and that the inquiry itself had been conducted fairly. Though they felt the system was unjust, they were somehow reassured when they experienced part of the system as operating fairly. Their seduction into the attempted adoption of the techniques of advocacy as a means of pleasing the Reporter is a further example of the dominance of liberal/democratic ideology. But it is important that the objectors participated in their own defeat and were not, in any simple sense, crushed by the state, as seems to be the unavoidable conclusion of Roger's analysis. He cannot provide

any satisfactory account of the contradictions within the participation of the lay objectors. I have argued that such an understanding is essential if we want to understand how technical rationality dominates the inquiry.

From my analysis of how the inquiry was constructed, and how legitimization was secured, it is possible to locate moments for potential transformation. e.g. Had the Reporter showed less interest in helping the objectors, less sympathy with their case and their difficulties in presenting it and less tolerance with their 'unprofessional' participation, the objectors might have been forced to cast more doubt on the fairness of law and/or democracy and to have perceived the inquiry as an illegitimate exercise of power.

One could locate a number of such 'potential transformations' but one of these would not be the possibility of an "institutionalised ideal-speech situation". For Habermas, it is the whole system of state policy-implementation which is techno-decisionistic and his "institutionalised ideal speech situation" is a Utopia to which we might aspire rather than a practical project which might be achieved by applying a particular strategy. Thus, for Roger to claim that the Moss Moran public inquiry was even potentially an "open public forum" is misleading.

The "ideal speech situation" takes place amongst equals where the relationship between power and knowledge has been removed. It is the realm where rationality rules through open and free discussion. My analysis shows the contemporary relationship between power and knowledge in the Moss Moran inquiry. This relationship is

inextricably tied to structural inequalities of power and knowledge in society some of which are institutionalised in forms of political and legal organisation. To remove the existing power-knowledge relationship would involve a revolutionary social change, and I would argue that it is quite wrong to suggest that this was ever a possibility during the Moss Moran inquiry.

While Roger can demonstrate that the inquiry system is technical/rational and that it does not offer objectors the possibility of "effectively" participating in decision-making, he can provide no knowledge which would help devise a political strategy which might make participation more effective, because he does not have a conceptual framework which allows him to discuss how the inquiry attains its varied and contradictory objectives.

For example he claims that

"the question then quickly becomes one of what ways (sic) can the development of a particular site be made more agreeable to objecting parties, than should the site be used for this purpose at all."

I accept his argument that the planning system is technical/rational rather than political. One example of this is that Government policy is a "fact" for the purposes of the inquiry rather than a matter for challenge or debate. This however is clear before the inquiry begins, it is part of the structure of the inquiry system. There is never any possibility of alternative policies becoming part of the inquiry remit, so I am perplexed as to what precisely Roger means by

"the question then quickly becomes....."

I also agree that the inquiry is about how to secure a degree of consent from the objectors but Roger does not deal either with the nature of this consent or the methods by which it is secured. e.g. the development can be made more agreeable both by the negotiation of specific planning conditions with the developers and by convincing the objectors that the inquiry has been carried out fairly and power exercised legitimately. Roger cannot account for the second point.

Roger also claims that the inquiry appears to be responsive, i.e. appears to promote and encourage lay participation, but he does not account for the nature of the objectors' participation nor discuss the extent to which this "responsiveness" of the system is experienced in practice. Despite the dissatisfactions expressed by the objectors, they still participated in the day to day procedures of the inquiry and must have felt somehow that they were participating in a meaningful way. Because Roger cannot account for this contradiction, he cannot explain the political significance of allowing lay participation in the public inquiry.

As one final example Roger claims that the Reporter operates with a very specific remit and has subtle, precise and often unspoken criteria for ascribing relevance to evidence. My analysis confirms exactly this point, but I attempt to show what these criteria are, where they come from and how they operate in the inquiry. It is important to realise that as well as operating with a precise remit, the Reporter also attempts to make the inquiry more

informal, and is genuinely sympathetic towards the lay objectors. These contradictions are necessary to understand the inquiry's legitimating function.

For Habermas our whole democratic system has transformed many political questions into technical questions. At the level of the public local inquiry the transformation is already complete - it only remains for legitimation to be secured in practice. There is never any potential "authentic public realm" or "institutionalised ideal-speech situation" at the Moss Moran inquiry. The objectors reproduce liberal/democratic ideological structures in their participation - it is not that they somehow have an "authentic" voice which is simply shouted down by the dominant louder voices in the inquiry. Before the inquiry starts, the objectors are prepared to grant some degree of legitimacy to the democratic process, it is this which has to be nurtured and maintained during the inquiry process for legitimacy to be secured. In contrast, Roger implies that the objectors are cajoled and bullied into presenting a technical-rational case against their will and their instincts by the domination of State agents and institutions in pursuit of technical rational knowledge.

However I argued that the objectors did not only reproduce aspects of the dominant ideology, they also penetrated this in a variety of ways. e.g. they were sceptical of their chances of success, they voiced personal and emotional criticisms of the development which they knew were not strictly relevant, and they felt themselves being manipulated and their views ignored.

There are contradictions in their participation. The potential

for changes or reforms can be assessed by examining the nature of these contradictions. That is why this level of analysis is important and where idealist analyses, comparing utopias with contemporary practice, fail. Roger addresses himself to several questions which he cannot answer using his approach e.g. why did the objectors participate in the inquiry? How was a measure of consent secured from the objectors? In what ways was the inquiry responsive to lay participation and why was this significant?

He wants to compare what happened at the inquiry with what could have happened. However had his analysis of what happened been more sophisticated he would have realised that his models of what could have happened were Utopias which were never a practical possibility, that is to say that they could not have happened.

Roger's analysis leaves no room for the contradictions which I found in the objectors' participation. The awkwardness of the practices of the inquiry are ignored in order to fit a conceptual explanation which is at a much more general level. Roger's analysis is useful as polemic. It might prevent us from becoming complacent with our "open democracy". This explanation may be valid at a general historical level, but not so as an explanation of the day to day practice of one inquiry. There can be as many problems involved in arguing from the general to the particular as vice versa. There is a problem in using ideal-type concepts to analyse the construction of social order. This approach is also adopted by Bankowski and Mungham (Bankowski and Mungham 1978) in a general discussion of lay participation in the law. They also use Habermas when they describe the introduction of lay participation into a technical rational

society as creating a tension between "democracy" and "efficiency". I have described a tension between the "bureaucratic" and "democratic" functions within the professional frame of reference (see below p221). The bureaucratic function is the collection of relevant facts, the democratic function is given in the rhetorical instructions to the Reporter to assist and encourage lay participation. Though the concept of "bureaucratic" function which I borrow from Weber, is very similar to the ideal-type of "bureaucratic efficiency" used by Bankowski and Mungham, our concepts of democracy are quite different. Bureaucratic efficiency, in ideal terms, requires that decisions are based on the technical knowledge of experts. The "good" is decided not by "the practical reasoning" of the community but by the State in the name of the public interest.

It is not quite clear what Bankowski and Mungham mean by democracy. At times they seem to refer to some utopian system of unconstrained rational debate amongst equals, at others to the rhetorical claims made by law about the nature of lay participation in legal fora. An example of the latter might be the circular 14 instruction to Reporters to allow "the maximum informality of procedurels" and to encourage "openness, fairness and impartiality". By "democratic function" I mean these rhetorical instructions to the Reporter. An important part of this study has been to describe how lay participation operates in the practices of the Moss Moran inquiry. In purely conceptual terms there is an obvious tension between a non- political, precise technical-rational mode of decision-making and a mode which involves open discussion and contribution from a variety of parties with competing interests.

It would be possible to analyse the inquiry in these terms under category 3 in their paper (Bankowski and Mungham 1978). Lay objectors by their participation in the inquiry become surrogate lawyers and thus "efficiency" wins because the objectors participate in a technical/rational manner. This is very similar to the argument put forward by John Roger, that the objectors are "forced" to adopt a technical-rational case.

Bankowski and Mungham proclaim an interest in making institutions susceptible to democracy and accuse others of being unable to do this because they accept the tension between "efficiency" and "democracy" as inevitable.

I would argue the Bankowski and Mungham confuse matters here because like Roger they slip back and forward between social practices and ideal-types without providing any adequate conceptual links. In practice, the public inquiry operates in a technical/rational manner, and makes rhetorical claims about the open and impartial nature of lay participation. The lay objectors, though critical of the system in some ways, nevertheless award legitimacy to the planning process and to the democratic process in general. Thus in a sense, the urge to democracy is effective because it has meaning for the objectors in practice. i.e. technical/rationality can only operate by using the ideology of democracy in such a way that people are reasonably satisfied.

Thus matters are more complex than Bankowski and Mungham suggest - it is not that the ideal-type of technical/rationality exists in practice and operates effectively and that the ideal type

of democracy is completely defeated and absent. The very notion of an ideal-type is that it has no precise existence in practice - it
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may be a useful tool for conceptual discussion of social change but it cannot be reproduced exactly in a particular social practice. It has already been abstracted from social practices. It is a statement of general tendencies and common factors which deliberately eschews the specific social practice in order to discuss structural changes.

Thus Bankowski and Mungham's categories of "efficiency" and "democracy" are inappropriate as an explanation of the contradictory practices of a particular piece of lay participation. Like Roger, their work, read as polemic, may serve a practical political function in rousing people to action, but in itself, their explanation is monolithic and tells us very little about the political strategies which might be appropriate to pursue a more "effective" democracy.

If one's aim is to understand how social practices reproduce social structures, how the State's activities secure legitimacy in practice and most importantly how change might be achieved e.g. "how institutions might be made susceptible to democracy" - a different
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mode of analysis - such as the one I have adopted and practised, is required.

As Bankowski and Mungham well know,

"sometimes participation can become penetration"

(2) See Weber 1949.

(3) I would rephrase this as "how power can be redistributed to the less powerful".

political reform it is not a matter of constructing an ideal type for "democracy" and then trying to implement this in social practice. Notions like "ideal speech situation" are Utopian goals towards which one might choose to aim. In order to make inquiries "more susceptible to democracy" we need to understand how they operate within a particular political system and how power operates through the practices of the inquiry. We need to locate those areas where particular strategies might be effective. The game of inventing conceptual Utopias is of a different order from the game of attempting to construct these Utopias in practice. Utopian visions may help to encourage people to fight for more control over their lives but they cannot provide them with the potential means of securing more power, and social change can only be achieved by the exercise of power.

Habermas 'ideal speech situation' is intended as a conceptual model against which we can measure the degrees of constraint operating in our own society. We might decide that it is a desirable model of society but then the problem becomes how to achieve it. The analyses provided by Bankowski and Mungham are and by Roger are unpromising starts. If technical rationality has such absolute dominance - how can it be changed?

For the purpose of political practice it is not enough to say that some "ideal" form of popular participation is not achieved, nor that technical/rational decision making dominates, nor that the operations of the legal system may be characterised as absurd from a particular perspective (Carlen 1976), nor that the legal apparatus is

designed to secure specific practical and ideological ends (McBarnett
(4)
1981). I agree with all these arguments in as far as they claim to be
general statements of what happens in society. However they tend to
present social structures as monolithic and impenetrable - even though
most of the authors know this is not the case. They lose the dialectic
between action and structure and the notion of society as a process.

They are all useful for various purposes e.g. demystifying the
dominant ideologies of our society or challenging complacency at all
levels of society. However for the purpose of choosing practical
political strategies to move towards Utopian goals, they
are of not much use. We need more detailed descriptions of how power
operates in social practices if we want to make any changes with
predictable outcomes.

I attempt to look at the inquiry as the production and
reproduction of structures and as part of the social process. The
object is to see how in a specific practice, social structures are reproduced
and, from the point of view of political practice to establish where
dominant ideologies are or might be penetrated.

- (4) Both Carlen and McBarnett claim to provide explanations of how the
capitalist State uses law to achieve its own ends. The criticisms
I have made of Roger and of Bankowski and Mungham similarly apply
to them. If their analyses only claim to demonstrate that legal
rhetoric does not appear in practice then I accept their arguments
and also agree that this level of analysis is politically useful.
It is when they attempt to provide causal explanations of the
social practices of particular institutions in terms of the
monolithic dominance of the State that I find cause to make
criticisms. Their analyses do not adequately describe the
contradictions in social practice, the relationships between
language, power and ideology and thus are of no use for choosing
political strategies. One can only despair at the successful
cunning of the State when one should be encouraging equally
cunning strategies amongst those who wish to see "effective"
democracy extended.

Ideological Gap

I now want to extend the discussion of the notion of the "ideological gap" which I raised in Chapter 2. I argued there, that the existence of a gap between the rhetorical claims made by law and the practices of law in action was inevitable for two reasons.

- (1) Meaning, is constructed in particular discourses, and in particular social practices, thus words do not have one unambiguous meaning. This can only be fixed for particular purposes in particular practices.

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Thus e.g. the instruction to the Reporter contained in Circular 14, to ensure

"the maximum informality of
procedures"

has a variety of "meanings".

For example, it serves the ideological purpose of legal rhetoric in affirming the sincerity of the inquiry process in inviting the participation of "ordinary folks", reassuring them that it will be made easier for them and that it won't be like giving evidence at the High Court.

In its practical manifestations it means that the inquiry procedures consist of a set of variations in the procedures of a court of law that are perceived as such by both the Reporter, as a

(5) see my discussion of Garfinkel in Chapter 2.

lawyer and by the objectors as lay persons. In other words, the Reporter believes that he is relaxing procedural rules to assist the laymen (while maintaining other procedures to secure his more pressing ends) and the objectors feel that they are being given a fair opportunity to participate.

- (2) The second reason for the inevitability of the gap is closely related to the above. Procedural rules and rhetorical instructions serve several different puposes. e.g. they reproduce the ideologies of justice and equity as part of the requirement of law to secure legitimacy for the operations of the State - this has to be done both at the level of rhetoric and in practice through the day to day operations of its institutions. They also reproduce in practice, with a greater or lesser degree of precision, the daily procedures of the law. (see McBarnett on due process, McBarnett 1981)

In the inquiry, there were very few public rules governing the day to day procedures of the inquiry thus the Reporter had a great deal of discretion which he used to balance the competing claims of "efficiency" and "democracy". In other words the rhetorical "maximum informality of procedures" was reproduced in the practice of the inquiry where some of its various meanings were realised. Most importantly, as I have argued, both the Reporter and the objectors believed that "informality" was aiding lay participation, though neither meant exactly the same by this term. For the Reporter it meant giving them a chance to have their say, helping them to understand

some "legal" procedures. For the objectors it also meant that
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someone would hear what they were saying and act on it, in their
interests. The Reporter was able to conduct the inquiry in such a way
that his technical/rational objectives could be efficiently satisfied
at the same time. It is the nature of this gap between the rhetoric
and practice of law or between democracy (the rhetorical encouragement
of lay participation) and efficiency (the technical rational result of
the inquiry) that I have tried to provide an account of in chapters 4,
5 and 7.

I would argue that my analysis shows that for political
purposes the concept of "a gap" is both inaccurate and unhelpful.
The rhetorical claims of "lay participation" are reproduced
during the procedures of the inquiry, the participants have to
believe that participation is possible and that it operates fairly.
It is only when this is not achieved, when objectors perceive the
inquiry as unjust, as unresponsive to their interests and desires,
as an attempt to conceal the exercise of powerful dominant interests,
that a politically useful gap exists. A gap between the "ideal" and
"the practical" is an essential part of bourgeois law and it must be
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(6) e.g. the techniques of cross-examination (see Chapter 7).

(7) The gap is inevitable now at this historical juncture -
within the ideological structures of liberal democracy - it
need not necessarily always be inevitable. Building utopias
as goals or exhortations is a legitimate activity but
designing strategies to reach these utopias is a different
order of activity, we have to start from the historical
situation in which we find ourselves. Thus the public
inquiry is a liberal/democratic institution which serves a
variety of functions. We can only change the inquiry in so
far as these changes are compatible with these broader
structures - or in so far as they can instigate changes at
broader levels.

reproduced in practice - there is no political point in attempting to close the gap either by attempting to realise the ideal in practice or to invent new ideals and new procedures to implement these ideals in practice. Both these projects are ill-concieved for the reasons I have discussed above.

In one sense there is no gap between the rhetoric and the practice of law because the rhetoric must be "lived as real" in the practices of the inquiry by the objectors, in order for the inquiry to secure legitimacy. Thus one important significance of rhetorical claims is only constructed in material practice. "Social structures have to pass through the cultural milieu", as Willis puts it. (Willis 1977)

In another sense, the gap between idealist visions of popular participatory democracy and lay participation in the contemporary public inquiry is inevitable because of the "imaginary" nature of ideology which always presents the social world "as if". (see p69)

We have here two different notions of the reproduction of ideological structures. These structures present law as just, equitable, and neutral. This is a sham, because law represents particular interests and reproduces injustice and inequality. However the dominant ideology of liberal/democratic law is reproduced in the inquiry i.e. people in the inquiry think it is operating fairly. One of the reasons for this is that many of the practices of the inquiry are not only mythically fair but practically fair, e.g. the Reporter does give the objectors certain sorts of assistance in their participation which might be judged "fair" by an observer as well as by both parties involved.

Thus, in this public inquiry, the dominant ideology provides opportunities for its own penetration but survives these comfortably. Under different conditions it might not survive. This analysis is different to the models of dominance suggested, for example, by Bankowski and Mungham (Bankowksi and Mungham). It specifies the points of actual or potential penetration and gives some scope for adopting political strategies within the existing democratic procedures.

Implications

I now want to make some comments about the broader implications of my analysis of the Moss Moran inquiry. I have claimed that this work is underpinned by an interest in extending democracy by redistributing power and attempting to reconstitute some form of political forum, outside parliamentary debate and pressure-group politics. I share, with those who follow Habermas, a desire to see ordinary people secure greater involvement and control in political decision making, to transfer power from experts making technical/rational decisions to lay persons making political decisions.

How might this be accomplished in the light of the work in this research?

I would argue that firstly, "ideals" are goals to be
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pursued rather than immediately realisable achievements and that

- (8) For Bankowski and Mungham the ideal-type of "democracy" also seems to be a political "ideal" though usually there is a distinction between "ideal types" which are a heuristic device and ideals which are the expression of ultimate value.

secondly we have to select appropriate short-term strategies for political action. This entails a fundamental scepticism about the potential and predictable efficacy of legal reforms. Leaving aside for a moment the special problems of the "Big Public Inquiry" - the small and middle sized inquiries are technical rational and non political. They function to secure legitimacy for planning decisions and at the same time provide one way of publicly scrutinising planning applications to ensure that specifically measured standards are met by the applicants. The contradiction between "efficiency" and "democracy" is thus inevitable, but the specific balance in some inquiries may possibly be shifted towards democracy.

Big Public Inquiries create a great deal of media interest. Pressure group objectors use these Inquiries as a means of securing publicity. They want to make the public aware that political decisions are being disguised as technical decisions. With increased public awareness of how the system works, objectors will increasingly be able to use the system for their own political purposes.

There is already a crisis in the role of Big Public Inquiries.
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Their ability to secure legitimacy is under threat, from those pressure groups which are critical of the inquiry system and which try to expose its true political nature. From the point of view of many of the objectors, Windscale should have been about the desirability of nuclear power in Britain instead of the suitability of a site for the reprocessing of nuclear waste.

(9) See chapter 1 p22.

The PERG (PERG 1978) and OCPU (OCPU 1979) proposals are intended to extend democracy by providing "interested parties" (conceived in the broadest sense) with the opportunity to engage in public political debate fully backed with research and evidence. A decision would still be taken by the Minister but he would have a more difficult task in concealing the true assumptions and values underpinning this decision. Thus it would be more difficult to justify decisions solely on the grounds of technical rationality because their political nature would be clear and public.

My particular concern in this study has been with the local lay objectors, rather than the political pressure groups who very often dominate the objectors in a Big Public Inquiry. The lay objectors did not share the political analysis and commitment of the latter. Professional groups accept the likelihood of the development proceeding, and regard their work in the inquiry as being political, i.e. securing publicity and attempting to "raise the consciousness" of the public. The lay objectors participate because they want the development stopped and they have faith that the democratic process gives them an opportunity to do this.

However penetrations existed amongst this group and there is the potential for lay objectors to start behaving like pressure groups. This could put strain on the public inquiry system and there would be increased pressure for reform from the Reporters and from the legal profession. Reporters, in particular, would find themselves involved

in political debate (as is happening already in BPI's) when they are supposed to be neutral servants of the law. So long as lay objectors continue to have ultimate faith in the democratic process as it operates in the public inquiry - the Reporter can cope with their partial penetrations and general awkwardness. However as soon as objectors begin to use the inquiry as a forum for political debate in a fully conscious manner the Reporter would be in trouble. The tactics and modes of procedure which operated as I have described in the Moss Moran inquiry would be inappropriate. The quiescence of lay objectors would not be secured by procedural strictures or by securing respect for the Reporter's own personal decency.

It should have become clear that my political and theoretical commitment to this particular mode of analysis would not lead to a list of suggested reforms for public inquiry procedures, though I believe that the OCPU proposals for Big Public Inquiry procedures could make our democracy more open in a small way.

My argument is that my analysis of how power operates in one particular medium-sized inquiry will be useful to all those who are involved in public inquiry practice whether they be civil servants, ministers, lay objectors, lawyers, expert witnesses or whoever. I would support strategies designed to make democracy more open, and to redistribute power to those sections of the population which don't have much. However my analysis might be equally useful for someone who wanted to secure legitimacy for the state more cheaply. My analysis was designed to inform political practice, that does not mean it can only be used to further my own preferred political ends.

Lawyers or Laymen

Bankowski and Mungham suggest that the legal profession is one serious impediment to the extension of "democracy". Though they themselves do not discuss public inquiries, I would argue that they might see the use of lawyers in inquiries as one way of establishing technical rational domination and preventing meaningful participation by lay persons. They would like to see the domination of lawyers, experts and "professionals" generally removed, and "ordinary" people permitted to take decisions involving their own lives. My work on the Moss Moran inquiry would confirm that laymen very often attempt to conduct themselves like lawyers, at least by imitating the more obvious techniques of cross-examination. However, though I share their concern to "make institutions more susceptible to democracy", I don't agree that the removal of lawyers from the inquiry would necessarily make it any more "democratic". This is an example of a utopian strategy which is inappropriate because of an inadequate understanding of how power operates in social practices.

The system is technical-rational, the removal of lawyers (which is politically highly unlikely) would not change the system itself and in fact might make it even more difficult for the objectors to participate. For example if they had a very strong technical-rational counter case, skilled legal representation might give them the best chance of success. The inquiry is a democratic process which amongst other things, requires applicants to produce certain information about their plans, to ensure these meet a variety of standards and that mistakes have not been made. Even this level of

public accountability is an improvement on uncontrolled industrial/commercial development. It does not provide lay objectors with the opportunity to get involved in political debate about economic and social policy in general, far less to influence policy decisions in a direct way. In our parliamentary democracy these functions are formally provided for elsewhere (Parliament, ballot-box, media, MPs' surgeries etc).

The ideological social relations of liberal-democracy are reproduced at the level of belief, and in the public rhetoric of those who support the system and in that sense are reproduced in social practice. However they are not an accurate description of how power is distributed and operates in our society. They support a particular power distribution and present it as just, fair, and inevitable. They present the contingent as necessary; the political as neutral.

The fact that the inquiry collects certain information in order to make a decision is presented as neutral. Given certain neutral "facts", rationality tells us that only one decision is appropriate.

This is a political decision. The question of desirable economic and social goals is not on the agenda. That has already been set by Parliament another institution in which power operates but not
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according to the ideological relations of liberal democracy.

The inquiry is simultaneously, an instrument for securing the award of legitimacy from a potentially critical public, an example

(10) See my discussion of Law and State in Chapter 2 and more particularly Miliband (1969).

of powerful forces securing their own interests and a method of controlling and limiting these forces.

To eliminate lawyers from the public inquiry might involve the loss of the last function without any significant pay-off in terms of the arousal of a public political awareness. The elimination of lawyers will not in itself create the "ideal democracy" and might well eliminate those few parts of the 'ideal' that currently operate in social practice. Bankowski and Mungham do not see that law, as a means of regulation may serve useful social functions in addition to its mystificatory ideological functions. This is a point taken up in a paper by Paul Hirst. (Hirst 1980)

Hirst is critical of those Utopian writers who seem to suggest that law is bourgeois and that it will thus be unnecessary in a future socialism. Hirst argues that socialist states will need

"a firm framework of public law."

Democracy, for Hirst is not an absolute end in itself in the sense that for example Bankowski and Mungham talk about "mass popular democracy". Democracy is a means of selecting candidates to perform certain functions - not to "represent" the will of a particular constituency. Notions of "representativeness" require some notion of "general will" which for Hirst is metaphysical and thus of no practical significance. Systems or organisations are from the start implicated in a historical power structure which is not equitable. Law, defines the public domain in a liberal democracy, constitutes subjects as legal individuals and allocates formal

rights and duties. In liberal theory this set of relations should correspond to "the real world" and a lack of fit is a cause for concern. However in Hirst's analysis, these relations are ideological. They may or may not be reproduced in social practices and their precise significance can only be examined at this level. Democracy is a way of attempting to control powerful interests by enabling and limiting action. For Hirst this will be as necessary in any socialist state.

One important function of law in a liberal-democracy is the securing of legitimacy and in this, the ideological presentation of law in liberal democracy as just, fair and impartial is vital. Thus the gap between ideology and practice is vital, given that social, economic and political relations are unequal.

Hirst argues that while law,

"does not solve all the problems of the co-ordination and control of State and other agencies nor does it have a general, definite content or effectivity, it can be made to have definite effectiveness as part of the overall design and setting of the conditions of action of State and other agencies".

In other words it is possible to conceive of legal regulation which is not synonymous with the State, which in fact attempts to define and limit the action of the State. Law in liberal democracy is both an instrument of the State and retains a degree of independence which constrains certain State actions.

Hirst's point is that the notion of "legal regulation" is as necessary to a socialist democracy as it is to a liberal democracy. What Hirst is unclear about is whether the ideological gap, (between legal rhetoric and legal practice) will exist in a socialist democracy? Will socialist law present a set of ideological social relations by which it will attempt to secure the award of legitimacy or will legitimacy be granted solely because there is a good fit between the claims made by law and its practical achievements as perceived by all sections of the population?

These are not questions that can be answered by reference to this study of the Moss Moran inquiry, but it is possible to speculate. One possible scenario of planning in the sort of socialist democracy hinted at by Hirst might resemble the OCPU proposals for a Big Public Inquiry. The inquiry would be in two stages. The first stage would include the presentation of evidence and argument about the proposed development. This would explicitly include political debate about economic and social policy relevant to the development. In the Moss Moran case these could have been debates on the nature of hazard assessment procedures, the economic and social consequences of a growth economy based on fossil fuels or even the difficulties of lay participation in the process, the domination of experts, the role of the Reporter/ Inspector.

After this stage would come the testing of evidence by cross-examination. A socialist democracy will have specific criteria by which to decide which evidence is relevant and how to assess the weight which should be given to different evidence. In contrast with the

Moss Moran inquiry, these criteria can be made public and explicit.

(11)

There will almost inevitably be conflict - the interests of some groups are going to be placed above the interests of others. Unless we are in Habermas ideal communications society, where the defeated interests would submit to the pure rational superiority of their opponents, this conflict is inevitable and probably insoluble. The State would nevertheless have to ensure that somehow those interests which were defeated were appeased to avoid social unrest or revolution.

The social world is so complex, prediction is a perilous occupation. However I would argue that socialism will require to secure legitimation and it is likely that the ideological force of legal regulation would be a powerful tool. One reason for this is the current importance of law for legitimacy - any socialist law will have this legacy to cope with.

I don't want to indulge in further speculation. The shape of law in a socialist democracy will depend on the social relations and conditions of the time and place. These cannot easily be predicted and it seems clear that any immediate change of this nature in Britain is unlikely.

However I would argue that any such change will only be achieved by adopting strategies which penetrate the weaknesses in the operations of the dominant power structure. Some of these

(11) Exactly what these criteria might be will depend on the existing social conditions. There is no reason why the criteria might not be exactly the same as the current criteria. The difference is that they would be publicly available.

strategies could involve the use of legally defined rights and statuses as a point of entry. From this point of view Bankowski and Mungham are wrong to suggest the elimination of law and lawyers as a strategy for extending "democracy". The selection of appropriate strategies requires an understanding of the complex and pervasive operation of power in social practices such as I have attempted to accomplish in this study.

That part of their work which consists of the "demystification" of the relationship between law and State and of the gap between rhetoric and practice remains useful for the purpose of making people aware of the political nature of decisions which are presented as technical-rational. This is not to say that we must necessarily disagree with the decision. For example, in the Moss Moran case it may be that after a full political debate and close examination and testing of evidence given the political, social and economic conditions, that one might support the development. But this would be a political decision, justified by argument and evidence and not a technical-rational decision which is presented as "inevitable" given the "neutral facts" of the matter.

Appendix 1

Methodology

The nature of ethnographic investigation, where a lone researcher studies a social setting using qualitative, interpretive methods rather than quantitative methods, raises the inevitable problems of validity. How does a reader assess the results of the research? To assist the reader, in this section, I give a brief description of the sources of my data and the methods which I employed to collect this data. I also make some comments on the assessment of the validity of ethnographic research.¹

My methods of data collection were observation, interviews and documentary analysis.

(1) Observation

I attended two meetings of the Action Group before the inquiry, the pre-inquiry procedure meeting and the whole of the inquiry itself. During the inquiry, I adopted the role of an interested member of the public. That is to say that I only read the material which was available for general public consumption. I did not read the verbatim transcripts during the inquiry nor did I read those precognitions of evidence which were not readily available to the general public. As a researcher I could have had access to these materials but, as far as possible, I wanted to try to make sense of the inquiry as an intelligent layman. Since I had no previous first-hand experience of inquiries, I felt that this approach might help me understand the position of many of the objectors.

I took extensive notes on my observations and also recorded my own changes of perspective and understanding as the inquiry proceeded.

¹ See also Chapter 1 and Chapter 8 of the main text.

(2) Interviews

This method consisted predominantly of informal conversations with the objectors particularly before the inquiry but also during the inquiry itself. I was interested in two main topics:

1. Descriptions of the organisation of the Action Group, their activities, and their tactics for the inquiry.
2. Their attitudes to the progress of the inquiry and to the politics of lay participation (in the most general sense).

These discussions were supplemented by more formal interviews with leading members of the Action Group, before the start of the inquiry. These interviews were unstructured, but covered the same topics as above. I was interested in their descriptions of what was going on inside the Action Group, and their attitudes to and knowledge of public inquiries before they began to participate in the inquiry.

I decided not to conduct further interviews during the course of the inquiry because I was concerned with the problem of contamination. That is where the researcher changes the data which he is trying to collect by the very conduct of the research. I saw two potential problems:

1. That I would lose my detachment as an independent observer by getting too close to the objectors and developing sympathy for their case.
2. That my questions might cause the objectors to think about the inquiry in a different way, with the result that they might change their tactics or their mode of participation.

I did, however, conduct interviews with three objectors at the end of the inquiry. The questions concerned their perceptions of the inquiry, the value of their participation, the likely outcome of the

final Report and their views of the inquiry system after their experience of participation.

As the inquiry drew to a close, over the last three or four days, I had more informal conversations with objectors on the above topics, because I judged that the danger of contamination had passed.

(3) Documentary Analysis

Primarily because of the danger of affecting the cause of the inquiry by my efforts to collect data, I decided that my main source of information would be official documents.

The most important document was the transcript of the inquiry. This was the official verbatim transcript which was used by the Reporter, and those parties who could afford to purchase a copy. I borrowed a copy of the transcript for about eighteen months. The transcript consisted of 19 A4 volumes of typescript. There were around 200 pages on average in each volume. It consisted of a verbatim account of the day to day proceedings of the inquiry.

In addition to the transcript, I also obtained copies of all precognitions of evidence submitted by the various participants as well as a number of other submissions, observations and reports sent to the Reporter.

After the inquiry had finished, I obtained a copy of the final Report. These documents were supplemented by my daily notebook of the inquiry, which ran to nearly 200 pages over the 18 day course of the inquiry.

Techniques of Analysis

I approached the transcript with a number of questions in mind. These had been formed by my reading of the literature, my observations during the inquiry and my interviews and conversations with the

objectors. With these in mind, I read through the transcript a number of times isolating the contributions of certain individuals and groups: the Reporter, the Objectors, the Lawyers and the Technical Experts. An important technique was to compare the evidence as it appeared in the verbatim transcript with the Reporter's summary of evidence and findings of fact in the Final Report. This also allowed me to assess the "success" of cross-examination and to develop the criteria of "facticity" and "relevance".

Throughout the period of data analysis I constantly referred back to my own diary of the inquiry and to the interview notes and read and re-read the transcript. My conceptual scheme ordered the data and influenced its collection but was at the same time re-shaped and re-formulated by the process of data collection itself. This interaction between theory and practice is one of the justifications of the ethnographic method.

Validity

Validity is always a problem in ethnographic research. I would argue that my methods of data collection and analysis were rigorous and thorough and that I have produced an account of the inquiry which not only fits with the literature on the subject (albeit in a critical manner) but which could be read and evaluated by the inquiry participants themselves. This is perhaps the ultimate test of validity for a piece of ethnography.

As I argued throughout the main text of this study, my aim was to produce an account of how structurally located power operates through the day to day social practices of the inquiry. I selected those methods and concepts which, I have argued, were most appropriate for my purpose. This is not to say that my account is arbitrary, nor that it is unrelated to the inquiry as a series of material events

which were experienced by the participants. My aim throughout was to understand the experiences of the various participants and to explain how these various perceptions and internal contradictions could co-exist within the social order of the public inquiry. Though ethnography requires the use of subtle interpretive methods, that does not mean that data collection cannot be thorough, disinterested and accurate.

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